

103
**IMPLEMENTATION OF THE INTER-
MODAL SURFACE TRANSPORTATION
EFFICIENCY ACT OF 1991 [ISTEA]**

(103-15)

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THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION
OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

April 20, 1993 (Government Officials' Views; Highway Issues)

April 21, 1993 (Highway Issues)

April 27, 1993 (Transit Issues)

April 28, 1993 (Transportation Enhancements; Indian, Park, and Public Land
Roads; Scenic Byways, and Recreational Trails)

May 4, 1993 (Safety Issues)

Printed for the use of the
Committee on Public Works and Transportation



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IMPLEMENTATION OF THE INTER-MODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 [ISTEA]

(103-15)

HEARINGS

BEFORE THE

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SURFACE TRANSPORTATION

OF THE

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IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA)

(Government Officials' Views; Highway Issues)

TUESDAY, APRIL 20, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2167, Rayburn House Office Building, Hon. Nick Rahall (chairman of the subcommittee) presiding.

Mr. RAHALL. The Subcommittee on Surface Transportation will come to order, please. The Subcommittee on Surface Transportation is meeting today to commence a series of oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

Since the establishment of the interstate highway system in 1956, no other law has so revolutionized the way the Federal Government viewed the surface transportation requirements of our Nation. As the construction of the interstate system draws toward completion, ISTEA set forth a new national highway system to focus Federal resources on roads that are essential to interstate travel and international commerce.

Eliminated was the "straight jacket" approach in allocating Federal funds to the States. Under ISTEA, State and local governments are given more flexibility in determining their transportation needs. For example, instead of the Federal Government prescribing specific amounts for primary and secondary roads, under the block grant Surface Transportation Program, the States will make these determinations. With ISTEA, Congress also reaffirmed its commitment to expanding transit opportunities for not only urban, but rural areas of the country as well.

Integrated planning, the empowerment of localities, and increased sensitivity to the environmental ramifications of transportation projects all are mainstays of this Act. And to move the Nation toward providing for the transportation needs of the 21st century, new technologies such as magnetic levitation and intelligent vehicle highway systems are being advanced today.

We are now in the second year of the ISTEA authorization period, and I think it is appropriate to ascertain just how well the

new law is working, and whether any modifications to the statute or the manner by which it is being implemented are necessary.

Today and tomorrow, the primary focus of the hearings are on highway issues. Next Tuesday, we will reconvene to review and receive testimony from Secretary Pena, with the rest of that day reserved for transit issues. On April 28th, the focus of the hearing will be on transportation enhancements, the Federal Lands Program, scenic byways, and the recreational trails program. Finally, on May 4th, we will conclude with a hearing on highway safety issues.

Before we continue, I would like to insert into the record at this point, a statement from the Chair of the full Committee on Public Works and Transportation, Mr. Norman Y. Mineta.

[Mr. Mineta's prepared statement follows:]

REMARKS BY

NORMAN Y. MINETA, CHAIR

COMMITTEE

ON PUBLIC WORKS AND TRANSPORTATION

SURFACE TRANSPORTATION

SUBCOMMITTEE HEARINGS

APRIL 20 AND 21, 1993

IMPLEMENTATION OF THE INTERMODAL

SURFACE TRANSPORTATION

EFFICIENCY ACT OF 1991

I am delighted to be participating in the Subcommittee on Surface Transportation's oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Our Committee can be justly proud of this landmark legislation. In addition to authorizing over \$155 billion for highways, highway safety, public transportation, motor carrier and research programs, ISTEA revolutionizes the way projects are selected and gives States and local governments much greater flexibility to use their highway and transit funds interchangeably to address the real transportation problems in their communities.

During the next two days as we focus on highways, I will be interested in the witnesses' assessment of the progress of several key programs.

I look forward to the Administration's report on the status of the National Highway System and the development of the management systems required by ISTEA for pavement, bridges, safety, congestion, public transportation and intermodal facilities.

I am particularly interested in how the Surface Transportation Program is functioning and whether its flexibility has affected the types of projects selected in major metropolitan areas.

The metropolitan and statewide planning programs are also of critical importance in implementing ISTEA. Are the States and Metropolitan Planning Organizations (MPO's) cooperating effectively? If not, what can be done to improve the process.

Because so many of our metropolitan areas can not meet Clean Air standards, implementation of ISTEA's Clean Air related provisions will be very important. Do MPO's have the technical expertise to satisfy the conformity requirements of the Clean Air Act? If not, what types of technical assistance should be provided? Is the Congestion Mitigation and Air Quality Improvement Program (CMAQ) effectively assisting nonattainment areas in improving their air quality?

These are a few of the questions I would like to see addressed during the next two days of hearings. I also look forward to hearing about any other issues the witnesses feel are relevant to the effective functioning of ISTEA.

Mr. RAHALL. I look forward to hearing from today's witnesses, but before proceeding further, I will recognize the distinguished ranking minority Member, the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. I look forward to saying that a number of times over the course of this year. I'd just like to say how much I look forward to working with you as we consider the many important issues under the jurisdiction of this subcommittee. It's appropriate that the subcommittee is holding its first series of hearings on the Implementation of the Intermodal Surface Transportation Efficiency Act of 1991. After all, ISTEA was, without a doubt, the most ambitious and far-reaching legislation to come through this Committee during the last Congress.

Now, a year and a half after its passage, it's a good time for us to take a look at how the Act is actually working. The bill made fundamental changes in our transportation program. More flexibility has been given to States and local areas so that they can determine the best use of Federal aid funds based on their own particular transportation priorities and needs. Increased control and responsibility has been placed on Metropolitan Planning Organizations for planning and the selection of transportation projects in major urban areas. I know that these changes have caused tension and uncertainty in some areas. These hearings will be helpful in determining whether this is simply due to the fact that we are still getting used to the new system or whether the Act can and should be improved in some ways.

Requirements of the Clean Air Act have also complicated transportation planning, particularly in non-attainment areas, such as Milwaukee in my own State of Wisconsin, and I'm pleased that some of our witnesses today will be addressing this particular issue.

I'd like to join you, Mr. Chairman, in welcoming our distinguished witnesses here this morning. I look forward to their testimony, and I'd ask unanimous consent that a statement by the ranking Member of the full Committee, Mr. Shuster, be included in the record.

Mr. RAHALL. Without objection.

[Mr. Shuster's prepared statement follows:]

**OPENING STATEMENT
HONORABLE BUD SHUSTER
OVERSIGHT HEARING OF THE
SURFACE TRANSPORTATION SUBCOMMITTEE
ON IMPLEMENTATION OF THE
INTERMODAL SURFACE TRANSPORTATION
EFFICIENCY ACT OF 1991
4/20/93, 2167 RHOB, 10:00 AM**

- o Thank you, Mr. Chairman. I would like to commend you for scheduling this series of hearings to review implementation of the Intermodal Surface Transportation Efficiency Act.
- o The ISTEA was one of the most significant achievements of the 102nd Congress.
- o By increasing infrastructure investment levels, it paved the way for national economic benefits that we will reap both in the near term and well into the 21st century.
- o I am pleased to see that the administration has proposed to meet the highway investment levels set by Congress in 1991. It is only through full funding that the important goals of the ISTEA can be realized.
- o The centerpiece of the ISTEA is the establishment of the National Highway System--a 155,000 mile system of interstates and major arterials.
- o These are the highways that will support our nation's economic life in future decades. They will be the arteries for the interstate and international freight movements, for personal mobility and tourism. They will be critical links to all other modes of travel.
- o The ISTEA also gave states dramatic new flexibility to use funds for projects they believe are best suited to local conditions.

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- o **Metropolitan planning areas were given greater responsibilities in the planning process. We would like to hear how the planning process is moving forward.**
- o **These are some of the most significant changes in surface transportation programs made by the ISTEA, but there are many more.**
- o **It is only appropriate that Congress take a close look at these new programs. Are they on track, are they operating as intended, and what have been the consequences of ISTEA's changes?**
- o **I welcome our witnesses to the subcommittee, and I look forward to hearing your comments on implementation of the ISTEA.**

Mr. RAHALL. The Chair recognizes the gentlemen, and the Chair will recognize Members in the order in which they come into the hearing.

The gentleman from New Jersey, Mr. Franks, is recognized.

Mr. FRANKS. Thank you very much. I have no opening statement. I look forward to working with you and the Members of the Committee in the hearing.

Mr. RAHALL. Thank you.

The gentleman from California, Mr. Baker?

Mr. BAKER. I think I'll hold my comments also. Thank you very much.

Mr. RAHALL. All right.

The gentleman from New Hampshire, Mr. Zeliff?

Mr. ZELIFF. Thank you, Mr. Chairman. I, too, am looking forward to the hearing and testimony, and would like to—if I could, by unanimous consent, Submit my prepared statement for the record.

Mr. RAHALL. Without objection, your prepared statement will appear in the record.

[Mr. Zeliff's prepared statement follows:]

STATEMENT OF HON. WILLIAM H. ZELIFF

MR. CHAIRMAN,

I WANT TO THANK YOU FOR CALLING THIS HEARING TODAY, AND FOR FOCUSING THIS SUBCOMMITTEE'S ATTENTION ON THE IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991.

ISTEA REPRESENTS PERHAPS THE MOST INNOVATIVE AND EXTENSIVE RESTRUCTURING OF FEDERAL TRANSPORTATION POLICY SINCE THIS NATION DEDICATED ITSELF TO CREATING A NATIONAL HIGHWAY SYSTEM 34 YEARS AGO.

INCREASINGLY COMPETITIVE GLOBAL MARKETPLACE, WE NEED TO HAVE THE TRANSPORTATION INFRASTRUCTURE TO SUPPORT AND NURTURE NEW BUSINESSES AND FACILITATE THE EXPANSION OF EXISTING ONES.

ISTEA PLACED THE NATION'S FOCUS ON THE CRITICAL NEED FOR EFFICIENT TRANSPORTATION. WE HAVE DEVELOPED A TRANSPORTATION STRATEGY THAT PLANS FOR THE NEXT CENTURY BY MAKING AMERICA AN INTEGRATED, INTERMODAL SOCIETY.

I AM HOPEFUL THAT WE TRULY HAVE

ACCOMPLISHED THIS TASK, THAT CONGRESS HAS TAKEN THAT ALL IMPORTANT FIRST STEP TOWARD ADDRESSING OUR NATION'S SURFACE TRANSPORTATION NEEDS THROUGH PASSAGE OF ISTEА. THESE OVERSIGHT HEARINGS WILL SERVE TO ENLIGHTEN THIS SUBCOMMITTEE AS TO WHETHER ISTEА IS ACCOMPLISHING THE GOALS THAT WE ENVISIONED.

MR. CHAIRMAN, I AM LOOKING FORWARD TO HEARING TODAY'S TESTIMONY ON THE IMPLEMENTATION OF ISTEА FROM THE PERSPECTIVE OF THE CITIES, COUNTIES, AND REGIONAL COUNCILS.

THANK YOU MR. CHAIRMAN.

Mr. RAHALL. The gentleman from California, Mr. Kim?

Mr. KIM. No comment.

Mr. RAHALL. Thank you.

Without objection, all Members' prepared statements will appear in the record at this point.

[The prepared statements of Representatives Baker, Johnson, and Costello follow:]

Remarks of Cong. Bill Baker/Surface Transportation Subc.
Oversight Hrngs/April 20, 1993

Mr Chairman:

I commend you for holding these oversight hearings. I very much look forward to determining why some local and state governments have not fully used the flexibility they have been given in ISTEA to allocate federal transportation money, and what might be done to facilitate that process.

I also feel strongly that any and all gas tax revenues should be used exclusively for purposes of transportation infrastructure - primarily the refurbishment and development of transit, road, and rail.

We must keep in mind that America's global political strength comes from her economic strength. And that this economic strength is founded upon the twin towers of capitalism: production and distribution.

Although the American worker continues to be the most productive in the world, we must also ensure that America is equally successful in the rapid and efficient distribution of goods throughout our economy.

Distribution of goods can be fast and efficient only where our nation's transportation infrastructure - our roads, highways, bridges, and railroads - are sound and well-maintained. A weak and decaying network of roads, bridges, and railroads adds huge costs to production and transportation and acts as an insidious hidden tax upon all American consumers.

It is for this reason that ISTEA must be fully funded, and gas tax revenues be used exclusively for infrastructure purposes.

Because, it really makes no difference if American workers produce the best goods if we are incapable of moving those goods where they need to go.

I look forward to hearing the testimony of our witnesses and learning how we might better achieve these objectives.

OPENING STATEMENT OF REPRESENTATIVE EDDIE BERNICE JOHNSON

MR. CHAIRMAN, I APPRECIATE YOUR CALLING THESE HEARINGS TODAY, AND I THANK ALL OF OUR WITNESSES FOR THEIR PARTICIPATION.

AS A FORMER TEXAS STATE SENATOR, I HAVE BEEN A FIRST-HAND WITNESS TO THE **FORMER** RELATIONSHIP BETWEEN STATE AND LOCAL TRANSPORTATION AGENCIES. NOW THAT THE LAW HAS MANDATED A COOPERATIVE PROCESS BETWEEN STATE AND LOCAL AUTHORITIES, I AM MOST INTERESTED TO LEARN HOW THIS ALLIANCE IS TAKING SHAPE.

THIS SERIES OF HEARINGS WILL ALSO PREVIEW THE FORTHCOMING NATIONAL HIGHWAY SYSTEM, WHICH WILL DETERMINE THE ROADS THAT ARE MOST IMPORTANT TO INTERSTATE TRAVEL AND NATIONAL DEFENSE. I AM PARTICULARLY INTERESTED TO LEARN HOW STATES ARE GOING ABOUT MAKING THEIR RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION. BECAUSE TEXAS HAS SO MUCH TO GAIN OR LOSE UNDER A FREE TRADE AGREEMENT WITH MEXICO, I WILL DIRECT MUCH OF MY ATTENTION TOWARDS THE CONFIGURATION OF OUR NATIONAL HIGHWAY SYSTEM.

JERRY F. COSTELLO
 21ST DISTRICT ILLINOIS
 119 CANNON BUILDING
 WASHINGTON, DC 20515-1321
 TEL (202) 225-5681
 FAX (202) 225-0285
 1316 NIEDRINGHAUS AVENUE
 GRANITE CITY, IL 62040
 TEL (618) 451-2122
 FAX (618) 451-2126
 8787 STATE ST. SUITE 207
 EAST ST LOUIS, IL 62203
 TEL (618) 387-8833

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Congress of the United States
House of Representatives
Washington, DC 20515-1321

OPENING STATEMENT

CONGRESSMAN JERRY F. COSTELLO

SUBCOMMITTEE ON SURFACE TRANSPORTATION

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

April 20, 1993

Mr. Chairman, I want to thank you for calling this series of hearings to study and discuss the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Highway and Transit issues will be thoroughly evaluated by a number of state and local governmental officials and representatives of Metropolitan Planning Organizations. In addition, later hearings will focus on transportation enhancements, Indian/park/public lands roads, scenic byways and recreational trails. Finally, the last scheduled hearing will examine highway safety issues.

I want to extend a warm welcome to the distinguished witnesses who have gathered to testify before this Subcommittee. Your evaluations and thoughts about ISTEA are much appreciated and indeed are needed by this Subcommittee in order to ensure that the legislation is being appropriately implemented.

Again, Mr. Chairman, thank you for your leadership on this issue. I look forward to working with my colleagues in evaluating the implementation of this historic legislation.

Mr. RAHALL. The Chair does recognize, if she wishes to make statement, the gentlelady from Washington, Ms. Cantwell.

Ms. CANTWELL. Thank you, Mr. Chairman. I want to commend the Chairman for holding this series of hearings, and I appreciate the opportunity to discuss the implementation of ISTEA—the Act.

I was not a Member of Congress when ISTEA was approved by the House, but I would like to take a moment to recognize the visionary work done in this subcommittee to develop the ISTEA legislation in 1991. I believe that it has changed the decision-making process in this country on transportation funding to a “bottom up” decision-making process.

While Congress was considering ISTEA, our State in Washington was implementing a Growth Management Act, and regional transportation planning organizations to really, for the first time, make the marriage between land use and transportation decisions. I believe that this landmark legislation in Washington gave us an advantage over many States in implementing the coordinating of planning outlined in ISTEA.

I would recommend that the subcommittee take a closer look at the process in Washington State. While we are still fine-tuning the process, I believe that our region can serve as an example for the rest of the country on how to make the policy work better.

In Washington State, we’ve established a partnership between the State Department of Transportation, local communities, regional planning bodies, and citizen groups. Both our ISTEA and Growth Management Act are designed to give people at the local level unprecedented involvement and flexibility in developing a mix of highway, transit, and other alternatives to address community needs, environmental concerns, and improve intermodal connections.

For example, by incorporating all interested parties and focusing on civic, business, and land use in environmental and energy policies, over \$17 million of \$61 million available to our region in surface transportation for congestion mitigation funds have gone to non-motorized projects. The bottom line is that Washington State ISTEA has fostered improvement in communication and a balance of projects.

I would also like to highlight another aspect of ISTEA legislation vital to my area, and that is ferry funding. Section 1064 allocates funds for the construction of ferry boats and ferry terminals.

Mr. Chairman, my district is divided by Puget Sound, and as a result, ferries are both an extension of highways and a mass transit system. The State Department operates one of the largest systems in the United States, carrying almost as many passengers as Amtrak. Thousands of passengers per day ride on this system, and we also have a growing number of ferry needs.

The funding for the proposal in the ISTEA was very modest. This is a competitive grant program which has worked well. I urge the Committee to continue to push for full-funding of Section 1064, and insure that the competitive nature of the program be preserved.

I look forward to the witnesses testifying here today, and I am committed to working with the Members on making sure that this program is efficient and environmentally sound and fiscally respon-

sible to the transportation policies, and I, again, commend the Chairman for these hearings.

Mr. RAHALL. Thank you, gentlelady.

Before proceeding with the list of witnesses, the Chair will advise all witnesses that we do have written copies of the testimonies, all testimonies will appear in the record at the beginning of your presentations, and you may proceed in any manner you desire during the course of your presentation.

If there are no other Members who desire recognition, we'll proceed with the witness list.

The first will be a panel composed of the Honorable Roger P. Roy, State Representative, Delaware House of Representatives, on behalf of the National Conference of State Legislatures. Also on the panel will be the Honorable Joseph Preston, Jr., State Representative, Pennsylvania House of Representatives, on behalf of the National Conference of State Legislatures.

Gentlemen, we welcome you to the subcommittee, and you may proceed as you desire.

TESTIMONY OF HON. ROGER P. ROY, STATE REPRESENTATIVE, DELAWARE HOUSE OF REPRESENTATIVES, CHAIR, TRANSPORTATION COMMITTEE, NATIONAL CONFERENCE OF STATE LEGISLATURES; AND HON. JOSEPH PRESTON, JR., STATE REPRESENTATIVE, PENNSYLVANIA HOUSE OF REPRESENTATIVES, VICE CHAIR, TRANSPORTATION COMMITTEE, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. ROY. Thank you. Mr. Chairman, Members of the subcommittee, I would like to thank you for convening this hearing to examine how the Intermodal Surface Transportation Efficiency Act, ISTEA, is being implemented in the States. I am here on behalf of the National Conference of State Legislatures, NCSL, to share with you, our position on ISTEA, and also to give you the perspective of the State of Delaware.

I serve as the NCSL Transportation Committee Chair. I am pleased to be joined here today by the Committee Vice Chair, Representative Joe Preston, of Pennsylvania. Although we serve in neighboring States, the contrasting transportation demands in our States illustrate the ever-present need for Federal aid programs which accommodate this variety.

In 1991, when Congress enacted ISTEA, the legislation was viewed as a bold leap into the 21st century. At this stage of the implementation process, I think it is safe to say that ISTEA will move us into the next century, but one small step at a time.

NCSL has, for years, stressed the desirability of consolidating and streamlining Federal transportation programs in order to provide States with needed flexibility. Congress listened, and responded with a reduction in program categories and flexibility to move funds to categories where the State deemed necessary. As part of the bargain, Congress made a commitment to increase funding to carry out the new programs and requirements. Unfortunately, funding reductions and uncertainties have hampered States' ability to implement ISTEA.

NCSL supports efforts underway through the supplemental appropriation process to fully fund ISTEA programs at the level they

were authorized. There is absolutely no way that the States have a prayer of complying with the multitude of regulatory requirements without adequate funding.

I would like to spend a few minutes highlighting the efforts of States to respond to the various requirements that are embodied in ISTEA. Less there be any misunderstanding regarding the flexibility permitted States in these programs, let me assure you that any latitude in decision-making goes hand-in-hand with accountability.

In order to take advantage of this increased level of flexibilities, States must establish and enhance public participation, incorporate Metropolitan planning organization input to State transportation plans, develop extensive management plans, and basically, justify all programming decisions.

The concept of flexibility is a far cry from the reality of flexibility. Under current law, there is a presumption that all participants in the transportation planning process will want to be flexible in the same way at the same time. There is a presumption that there is some comparability standards which provide guidance to States in measuring the relative merits of a bike path versus a roadway.

There is a presumption that everyone involved in the process is operating from the same baseline of information and definition of terminology. This is clearly not the case. And most important, there is a presumption that having enacted a Clean Air Act and an ISTEA, which, were not at cross-purposes, they would therefore be rendered compatible.

I suggest to you today that the conformity requirements alone, which attempt to pull these two acts together, threaten to bring transportation programs to a grinding halt. While all of the relevant Federal requirements are very tightly interwoven, they are also heavily inter-dependent. If a State falls short in one area, the system breaks down.

In Delaware, we are working most diligently on implementing the six management systems required under ISTEA. Where are we? We have a committee working on the establishment of these management systems. The difficulty is in the concurrence of ISTEA requirements. The management system, once established, will effectively drive planning decision. In the meantime, the State must move forward on both short and long-term transportation plans.

We are making a concerted effort to meet the challenges that were presented to us in ISTEA. We are struggling, however, by inadequacies in planning analysis. How do we accurately assess the future demands of the travelling public, when, obviously, the decisions made today will influence transportation demands in the future?

We have found that in order to fully embrace the ideals of ISTEA, we are having to change the mindset of the players from one of "winners and losers." It is clear that in a successful, integrated State transportation plan, modes should not compete, but compliment each other.

In this regard, we have welcomed the increased participation requirements; however, it would be fool-hardy for State transportation planners to assume that only those who participate, publicly hold a stake in State transportation decisions. As in Delaware,

States across the land are doing their best to adjust to meet the challenges of ISTEA, but these adjustments will not come overnight. The structure of ISTEA is a radical departure from past Federal aid surface transportation programs.

As ISTEA is a reimbursement program, I ask that you bear in mind that it is the State which must initially finance all projects. As such, planning and budgeting are intertwined in State legislative activities. The changes will come, but over time, in a thoughtful and careful manner.

In the meantime, on behalf of all the State legislatures, I ask you to insure that adequate time is available for the transition to this new program structure. In the meantime, the States' ability to implement ISTEA is being seriously undermined through under-funding, cross-cutting requirements unfunded mandates, and threats of legal action from those who differ with State and Federal interpretation of the law.

NCSL requests that this subcommittee make specific recommendations to provide relief from these impediments to implementation. As with any legislation of this magnitude, there is fine-tuning needed. ISTEA remains, however, an exceptional blueprint for a new State-Federal transportation partnership.

We, at NCSL, look forward to assisting in your work to further refine the State-Federal transportation partnership. I'd like to thank you for this opportunity to share my views with you today.

Mr. PRESTON. Thank you, Mr. Chairman, Members of the Full Committee, Members of the subcommittee. I'm pleased to be here today, joining Representative Roy in describing the State experience in implementing the Intermodal Surface Transportation Efficiency Act, better known as ISTEA of 1991.

The State of Pennsylvania has certainly benefitted over the years from the careful stewardship of Members of the Pennsylvania Delegation who have served on the Public Works and Transportation Committee.

This is particularly important, given the diversity of transportation interest in our State. It is often difficult to balance the needs of those who reside in heavily-populated urban centers, with those who must travel miles between population centers. Those of us in the Pennsylvania Legislature were given an assist by Congress in this regard a few years ago, and in efforts to balance these, often times, competing urban and rural needs in the State, we have not successfully satisfied everyone involved.

While it is not the handiwork of this Committee which compelled us to resolve funding imbalances, a Congressional mandate requiring that the Pennsylvania State Legislature enact a dedicated revenue source to finance transit systems motivated us. A threatened 25 percent withholding sanction of the State's federal aid highways funds was a powerful incentive.

However, in the interest of maintaining a true State-Federal relationship, I implore you to refrain from using this approach. If a requirement imposed upon States is truly a grant condition, then States' are willing to take steps to comply. But I have to tell you that the proliferation of Federal mandates is pushing States to the saturation point.

Prior to the enactment of ISTEA, there were 14–15 mandates, with which failure to comply, resulted in a penalty of 5–10 percent of highway apportionment. With the passage of ISTEA, I think that number doubled overnight; however, the newer mandates are a variation on the theme.

For instance, there are new mandates where a State does not actually lose money, it is just transferred into another category. But most pressing, is a mandate that States adopt laws to revoke drivers' licenses of anyone convicted of a drug violation. While this mandate provides for an innovative "opt out" provision, less than half of the States have been certified in compliance.

Only five States represented by the Members of this subcommittee are among those certified—Virginia, for enacting complying revocation procedures, West Virginia, Tennessee, Washington, and Missouri, for passing opt out resolutions. There are seven States that will face a five percent loss of highway construction funds on October 1, 1993, either by having adjourned without complying, or in the case of Kentucky, not having a 1993 session.

There are nine other States which have less than a month to enact necessary legislation, or face the same fate of those already adjourned. At a minimum, I ask that this subcommittee take steps to extend the deadline for compliance. The regulations were issued in August of 1992, giving some States just their short 1993 session to deal with this matter.

Better, Congress take the approach utilized by Representative Roy in his travel-link initiative. This is a program in Delaware which provides a financial incentive to employers to establish viable commuting options. From what I understand, it has been quite successful.

Now in Pittsburgh, of which I represent a portion, the general topography and demography give an advantage to promoting public transportation. One of the innovative approaches to alleviating congestion in Pittsburgh has been through the creation of exclusive busways to migrate through transportation.

To give you an example, what we have done is take unused train beds, removed the beds with your assist and your funding, and now they are exclusively traveled by busses, except for emergency transportation that we've used for local police departments, which has helped. Basically, the one busway that we have is almost paying for itself, so it has been very successful in that means.

I mentioned these two examples in the highlight on how the solution of a problem in one jurisdiction is not identical to the solution of another. This type of innovation should be fostered through Federal aid transportation programs, never mandated. As Representative Roy mentioned in his statement, the proliferation of unfunded mandates threatens to undermine State transportation planning activities.

The impact of transportation is on more than just transportation. The movement, or lack thereof, of people and goods determines the economic growth or the demise of the communities. I'm hopeful that the opportunity to review and approve the National Highway System will be a chance to focus on the integration of a national system to benefit all of the States.

Not too long ago, the seemingly simple act of approving the Interstate Cost Estimate became a vehicle of leverage, for every quasi-related transportation concern. NCSL supports the swift, unencumbered approval of the NHS, and also supports the development of a similar national transit network.

The interconnectivity of people and opportunity will ultimately define the economic health of our Nation. For this reason, it is important that highway and transit programs are fully-funded at their authorized levels. It is particularly important during this period of transition to an intermodal surface transportation program.

Unfortunately, some of the experience in Pennsylvania with the flexible funding provisions of ISTEA have been with institutional barriers, shrewd to flexibility. I strongly urge the subcommittee to reiterate the intent of Congress—that the administrative agencies foster, and not impede multi-modal decision-making at the State level.

In closing, I also call upon you to do what you can to eliminate the obstacles to implementing ISTEA.

Finally, I'd like to just add that my own local experience in dealing with the regulations that you've set forth with Metropolitan Planning Organizations—or MPO's—my own is going to be testifying here very shortly, the Southwestern Pennsylvania Planning Association.

We found that we've set up an awful lot of different forms of quasi-governments that basically are appointed by the governor, and depending on who is appointed on the Board, determines who is going to be represented. Sometimes—for an example, we're going through the problem of asking for more highways, but mass transit is not being addressed, in my personal opinion—and a lot of people within my city—are not being recognized.

Also within our State, we have the Turnpike Commission, which is another form of quasi government, interacting with the municipalities. In my lone county, to give you an example, I have 131 municipalities. Other than Cook County, no other county has more municipalities, so you have all of these different governments vying to get the attention of the MPO, but not everybody on the MPO is being represented, and I would ask for you to also look into these actions.

Finally, from my own transit association, we've come to find that within the administration, you have an awful lot of different bureaus who have their own little bailiwicks in dealing with the funding mechanisms, in dealing with ISTEA. This was supposed to be—we thought—interchangeable funding, but yet, we're finding that each one of these different departments or bureaus want to be able to defend themselves, and are not interchanging or mixing the funding that we would like. We would also ask you to be able to look into that.

Mr. Chairman, and Members of the subcommittee, thank you for your attention. We'll entertain any questions, should you have any.

Mr. RAHALL. Thank you very much, both Representatives. Representative Preston, you mentioned the distinguished work of the Pennsylvania Delegation in crafting this ISTEA legislation. I cannot agree with you more.

I will now recognize the ranking minority Member of the Full Committee, the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman. I certainly want to welcome you gentlemen here today. I think your testimony is really crucial because we've got to look at what we can do to make ISTEA even better, and I think there are some specific things we can do.

Representative Preston, particularly, I was pleased to hear you tell us of the organization's support for an unencumbered national highway system, because I think that if there's any legacy that we will hand on to our children and our grandchildren, it's going to be the development of this highway system, and I would hate to see it get bogged down.

I also want to compliment you in particular, because it's only through a Federal-State partnership that we're able to accomplish the things that we have been able to accomplish in Pittsburgh. Having spent the first 29 years of my life in Pittsburgh—living there and growing up there—I always, of course, have had a special affection for it, and have been back several times and met with several of the transportation leaders.

There are good things happening in Pittsburgh and across Pennsylvania, and it's in large measure, as a result of the efforts of you and your colleagues at the State legislature in conjunction with those of us here that are working, so I commend you for your efforts. Thank you very much.

Mr. RAHALL. Thank you. Do any other Members wish recognition, before I ask questions, as far as presenting their opening statements?

None for now? Okay.

If not, Representative Preston, let me ask you about a particular item you mentioned in your testimony, and actually, the question I had—you actually answered it already—and that is on the number of States which have met the April 1st regulatory compliance date in regard to revocation of drivers' licenses of anyone convicted of a drug violation.

I would just remind you that this was not the handi work of this particular Committee, but rather, was done by the Appropriations Committee in their wisdom. But we do appreciate—and it was pushed forward over the objections of this Committee, I might add, as well—but we do appreciate your bringing out that problem, and certainly answering the question I had about it, as far as how many States are coming into compliance with that April 1st deadline. This is something we will look at further as we hear other problems that are coming up with ISTEA.

You stated that the number of Federal mandates with "failure to comply" penalties has doubled since the enactment of ISTEA. My question is, aside from the drug violation item that you have mentioned, could you provide us with examples of what you view as particularly burdensome or unreasonable Federal mandates?

Mr. PRESTON. I can give you an example of one that is really hot in my State, and that's concerning motorcycle helmets. I'm sure if some of you sit down and note some of the—especially out in the West, I know what some of my other colleagues are going through.

Representative Roy.

Mr. ROY. We're under the same mandate on motorcycle helmets and on the drug provision, and currently, we have no legislation that's been introduced yet. We're contemplating having a bill come forward on a motorcycle helmet, but from talking with other Members, I doubt its passage would be happening this year.

Mr. PRESTON. Congressman Rahall, the biggest problem, too, is dealing with—meeting the time for the plan. For an example, when I said in October of 1992, my session just ended November 30, 1992, so we're just starting our session. There are some other States that—and one of the problems that I've discovered—there are an awful lot of States that do not have the support staff, along with short amount of time for notice, to be able to prepare the proper applications, and this is also hurting.

You know, a lot of States have just appointed their MPOs, they've gone through the public hearing process, and are going through the different recommendations from their respective communities, so this has been a very big problem, along with the technical expertise.

Being able to meet these guidelines and to be able to file it in a timely basis—I can remember being in Washington when they were flying the ISTEA Act down to, then President—I don't even want to mention his name at the time, but when he was in Texas—and I remember, we got copies and they said they were just warm from the press—but even then, I think that my State, having a heavier amount of staff to research that, it took us about nine months to be able to decipher some of the things that we would be able to do, not be able to do, and then appoint the respective MPOs and to recognize them, especially when you come from a State where you have too-heavily—between the East and the West, with Philadelphia and the Pittsburgh region, and then you have a lot of rural people in the area, too, who also have transit systems.

So to be able to recognize them both and be able to give everybody input, it's hard to be able to meet that Federal mandate, to be able to compile all the information, and the smallest States that don't have the large staffs that we have were really caught in a bind, and that's why we're here today on behalf of the NCSL, because of the deadline for these mandates.

Mr. RAHALL. Well, you know, in order for us to make any technical corrections—if that's going to come about—then certainly we need the help and input of you and the National Conference of State Legislatures. We do, however, need a little bit more specific input as well, as far as what exactly is the problem, and what exactly are your recommendations for change that we may want to make in the Act.

For example, Representative Roy, you referred to cross-cutting requirements that impede the States. Could you be a little more specific on that, as to what some of those requirements are?

Mr. ROY. Let me go even a little broader. We talk about the flexibility of ISTEA, which we all appreciate in the States. A word that I don't see being compatible, though, with flexibility, is uniformity, and at the same time that ISTEA tries to be flexible, also it tries to put all States basically in the same box of uniformity in what we have to comply with.

Now all the States are not uniform in the manner in which they operate. Delaware—I don't want to say we're unique, but we have some flexibility with our funding that many of my sister States do not have. We have a transportation trust fund that runs our transit systems, our highways, our operation, and our capital spending, so we have tremendous flexibility.

Delaware supports 100 percent of all transportation in the State. There is no local funding from counties or municipality. It's done from the State perspective. Other States don't have that flexibility, yet we all have the same uniformity that we have to abide by in the utilization of the MPOs, on who sets the priorities.

Right now, the MPOs have been a lot more powerful, basically to set priorities through the TIP. Now this is going to be used in certain areas where the State does all of the funding, and those particular States where there is no accountability by the local governments, to basically drive the funding that is not capital-intensive, but becomes operational-intensive.

A little capital money driven in the transit system requires a lot of operational funding where we don't get much funding from the Federal Government on the operational side.

Now this will end up driving the State budget the direction in which our spending goes because of heavy- operational money that we then become responsible for as a State, so all States don't operate the same in that particular manner—that we've put the uniformity on all the MPOs to act as—you know, in the same manner.

On the conformity issues, we've treated small States like large States. Small States—my State, as many of you know, is probably not much larger, or takes in probably less population than Joe's county. We don't have the resources that many of the larger States do, to go along with the conformity issue. It becomes a tremendous burden.

We have a population of roughly 680,000 people in the entire State. We probably have more government per capita than most States because—we bear the burden of the same administrative costs, as a small State of putting programs together, than large States do. They have a lot more data to process, but the pudding of the system—the administrative costs that go into it—is basically not that different between small and large, yet we've built the same uniformity around all the States, so we would like the flexibility to reflect the differences in the States in the way that they operate.

Mr. RAHALL. Well, thank you, again, for your testimony, and I hope you will convey to your staff on the National Association of State Legislators that we are interested and eager in working with them in trying to minimize difficulties and your testimony is helpful in that regard.

Mr. PETRI. We have a new President now, who once was a Governor, and he seems much more aware of some of the problems that governance at the State level involves. So hopefully we will be seeing a little more forthcoming attitude toward waivers and flexibility in implementing some of these national programs.

I did have a question for Representative Preston, having to do with the National Highway System. I'd like to associate myself with your urging that we move as quickly as possible in getting

that system determined and in place and up and running. In that connection, could you outline the involvement of the Pennsylvania State Legislature in developing the National Highway System within your State?

Mr. PRESTON. Well, along with the help of Congressman Shuster and Representatives Borski, Blackwell, and Clinger—

Mr. PETRI. Do you have any highways that aren't part of the NHS? [Laughter.]

Mr. PRESTON. I've had the pleasure of riding on the "Shuster Expressway," as I call it, and it is incomplete to connect to the city that it was originally supposed to—to the municipality of Altoona, and this has hurt, as far as when we've tried to build up the infrastructure in the center part of the State for Commerce, so you have two parallel major highways going on, and we've been very behind in our plan.

I can remember how long it took in the Southeastern corner, and for those of you who have ever gone to New York, how long it took just to complete Route 95—I think around 14 or 15 years, in coming together with a plan with our Administration and the Department of Transportation, along with the Turnpike Commission, and I guess the ISTEA Act really helps because I support the use of the toll road concept a lot more.

A lot of my colleagues in some of the middle States aren't aware, and we're just starting to find out about how it's planning the highway system, and they were really letting the Federal Government basically do it for them, but I think that the funding mechanism—that once we set up our plan—encourages us.

I don't think that we have a large objection to the encouragement as far as toll roads are concerned, and we look forward to working with it, it's just the diversity of the State that you have with the Metropolitan districts that we have—and then up in the far corner, you have Erie, Pennsylvania, which also has to be recognized, and in the Northeast corner, you have the Scranton area, so these are highways—and I just found out that some of the areas up by Scranton are going to be included in the New York MSA, so it's—these are the different things now, that we have to start readjusting.

Some of Representative Roy's district, we were talking about, is going to be—he's asking the MPO to accept a transit system out of Philadelphia. He needs encouragement to have more public transportation down his way, so one of the things that I'm really hoping for is that the highway system, along with mass transit, is looked at just as competitively.

Mr. RAHALL. The Chair recognizes the gentleman from Pennsylvania, Mr. Blackwell, who has just arrived, and I understand you two know each other—her.

Mr. BLACKWELL. Thank you, Mr. Chairman. I want to apologize for being late. I had to escort some of my constituents to the White House, but I did want to be here to introduce my good friend, Representative Joseph Preston, of the Pennsylvania House of Representatives.

I served in the House of Representatives for two terms before going to the Philadelphia City Council, and over the years I've had

a lot of interaction with the Representative, and certainly, he's here today on a very important mission for the State of Pennsylvania.

I would just like to welcome him here, and say that I'm sure that this Committee will do all we can to support those initiatives that he has started in the State House, and we look forward to working together for many, many years.

When you get back to Pittsburgh, I wish you would tell the former Speaker that I was asking for him.

Mr. PRESTON. I will, sir. Thank you very much.

Mr. BLACKWELL. Thank you. I have my prepared statement to offer for the record.

Mr. RAHALL. Without objection, so ordered.

[Mr. Blackwell's prepared statement follows:]

STATEMENT OF CONGRESSMAN LUCIEN E. BLACKWELL
BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HEARING OF APRIL 20, 1993
INTRODUCING STATE REPRESENTATIVE
JOSEPH PRESTON
PENNSYLVANIA HOUSE OF REPRESENTATIVES

MR. CHAIRMAN, I AM PLEASED TO
PRESENT TO YOU AND THE MEMBERS
OF THIS SUBCOMMITTEE,
REPRESENTATIVE JOSEPH PRESTON OF
THE PENNSYLVANIA HOUSE OF
REPRESENTATIVES.

REPRESENTATIVE PRESTON SERVES ON SEVERAL COMMITTEES IN THE PENNSYLVANIA HOUSE, INCLUDING SERVING AS SUBCOMMITTEE CHAIRMAN FOR HOUSING ON THE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE. IN ADDITION AND MORE RELEVANTLY, HE SERVES AS THE VICE CHAIR OF THE TRANSPORTATION COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES.

REPRESENTATIVE PRESTON WAS BORN
IN PENNSYLVANIA, GRADUATED
FROM THE UNIVERSITY OF
PITTSBURGH AND WAS FIRST ELECTED
TO THE PENNSYLVANIA HOUSE IN
1992.

HE IS HERE TODAY TO DISCUSS THE EXPERIENCE OF THE STATE OF PENNSYLVANIA, THROUGH THE EYES OF A LEGISLATOR, IN THE IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA).

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A S A F O R M E R S T A T E
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P O L I C Y M A K I N G.

- 6 -

IN CONGRESS, WE HAVE GRAPPLED WITH THAT ISSUE AND HAVE FELT A NEED TO PROVIDE SOME GUIDANCE AND DIRECTION TO THE STATES THROUGH LEGISLATIVE INITIATIVES IN THE FORM OF CONDITIONS, PENALTIES, SANCTIONS AND OTHER METHODS OF INFLUENCE.

I AM CERTAIN THAT EACH OF US ON THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION ARE ANXIOUS TO LEARN MORE FROM THOSE ON THE FRONT LINES ON THE EFFECT OF OUR POLICIES WITH THE IMPLEMENTATION OF ISTEA.

STATE REPRESENTATIVE JOSEPH PRESTON CERTAINLY BRINGS A VOICE THAT IS QUALIFIED, EXPERIENCED AND QUITE CAPABLE OF ADDRESSING THE SUBSTANCE OF THIS HEARING AND RESPONDING TO THE CONCERNS SHARED BY MANY MEMBERS OF OUR COMMITTEE. I AM THEREFORE HONORED TO PRESENT ONE OF PENNSYLVANIA'S FINEST, REPRESENTATIVE JOSPEH PRESTON. THANK YOU MR. CHAIRMAN.

Mr. PRESTON. This also helps prove that the East and the West in Pennsylvania do get along. [Laughter.]

Mr. RAHALL. The Chair will continue with its recognition of Members for the purpose of asking questions.

The gentleman from New Jersey—Mr. Franks, do you wish to have any questions?

Mr. FRANKS. No questions.

Mr. RAHALL. The gentleman from California, Mr. Baker?

Mr. BAKER. Briefly, Mr. Chairman, thank you.

I appreciate your testimony, but we were asked by the Chair for specifics, and let me offer you one that you might have passed by, and that was the bipartisan governors' plan of \$10 billion to fully fund ISTEA, an economic stimulus program that envisioned only rail and roads and infrastructure. Are you familiar with that? It was presented to this Committee prior to the floundering stimulus program.

Mr. PRESTON. I had seen a copy of it, but I'm not that aware of it, mainly because of the continuous conflict between the truckers right now, and the rail systems, and that's an ongoing process within Pennsylvania, too, with the cost that we need up in our East quarter to be able to build a road—

Mr. BAKER. I'm not familiar with how they handle that if there is a controversy nationwide between truckers and—in our area, we have intermodal and we're trying to get as many trucks off because many of the rail outfits own trucking companies, too, so it's to their benefit to try and clean up the highways.

But I wonder if this Committee is going to entertain that governors' plan seriously. It's a \$10 billion infrastructure that would fully fund ISTEA. As you know, we've fully funded ISTEA for one year, and that makes it tough for you to plan, but when we go back to any tinkering like that, we need your details of how to get rid of the snags.

It sounds to me like we have plenty of planning and mandates, and not much of the word efficiency—even though it's in the title of the Act—but we need your specifics as to how it's affecting Delaware and Pennsylvania before the Chair can put together a remedial package.

It's not good enough just to say that we're mandating too much—that's what we do when we pass these laws, and we've got to straighten them out if they are holding up and delaying your building of rail projects, and getting cars off the road or your road projects, and getting pollution out of the air.

Thank you, Mr. Chairman.

I would hope that we would entertain that package again, and look—even though the Appropriations Committee doesn't especially love us for this—look to some of that sequestered gas tax revenue that's now totalling \$18 billion, take \$10 billion of it and send it up, and let's see what they say about it, because it's time that we begin building all of the roads and cleaning up the air in the only way possible, and that's the alternatives—the rail, and the lack of congestion.

Thanks, Mr. Chairman.

Mr. RAHALL. The Chair will respond that the subcommittee—and I'm sure, the Full Committee—will entertain all serious rec-

ommendations with regard to modifications or technical amendments to ISTEA.

The gentleman makes a valid point and certainly, it will be one for further consideration. The Chair appreciates it.

Does the gentleman from the Virgin Islands, Mr. de Lugo have any questions?

Mr. DE LUGO. No questions.

Mr. RAHALL. The gentleman from New York, Mr. Levy?

Mr. LEVY. I have no questions.

Mr. RAHALL. Okay. The gentlelady from Virginia, Ms. Byrne?

Ms. BYRNE. No questions.

Mr. RAHALL. The gentleman from South Carolina, Mr. Clyburn?

[No response.]

Mr. RAHALL. Okay. The gentleman from Arkansas, Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. RAHALL. The gentlelady from Missouri has left.

The gentleman from New York, Mr. Nadler?

Mr. NADLER. Yes, thank you.

Representative Roy, you stated in your prepared statement that it is clear that in a successfully-integrated State transportation plan, modes should not compete, but compliment each other. In this regard, we have welcomed the increased participation requirements, and it's obviously that modes should not compete, but compliment each other.

I was wondering if you'd have any comment in this connection—ISTEA imposes all kind of planning requirements and it deals with roads and mass transit, but does not deal with rail in a particular—for example, with rail freight, which obviously has to compliment the use of the highway system, would you have any comment on the lack of—or the exclusion from both the funding and the planning from the ISTEA bill entirely—of any rail component, including in the planning process?

Mr. ROY. Thank you. As the Chairman of the NCSL Committee, and having participated in this process for the last several years through NCSL, every time we meet, we do see the competition between rails and the trucking industry. It becomes rather evident every time we meet. People are there from both industries promoting their particular mode of transportation.

I would only suspect that you are put through the same lobbying, the same pressures that we are at the State, also, and it's obvious that there is a lack, as far as a rail transportation, in ISTEA. We look at it from a State perspective, that we have tried within Delaware, to use State funding to directly subsidize certain projects that would enhance rail transportation.

In our capital program last year, we specifically put money to assist in the funding of a terminal by a contractor to bring in stone for road building. Most of our stone comes in from Pennsylvania through trucks. We estimated that this would eliminate 10,000 truck trips per day through the State by utilizing a terminal, bringing it in by rail rather than by truck because all the quarries are in Pennsylvania that we utilize in this State. We've had to supplement those programs through our own State funding, and we cer-

tainly would appreciate seeing more flexibility to see that we could use ISTEA funds to do projects of that magnitude.

Mr. NADLER. And would you think that the planning processes that are mandated on the States for highways and transits should be extended to rail, or not? Should they be put in the same planning process?

Mr. ROY. Yes, I do. If you're going to have an intermodal system, they should all compliment each other, like I stated earlier, and should work one with the other. They should enhance each other and not compete.

Mr. NADLER. Thank you.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. No questions.

Mr. RAHALL. The gentleman from North Carolina, Mr. Valentine?

Mr. VALENTINE. No questions.

Mr. RAHALL. All right. Representatives, we thank you very much for being with us today and presenting your testimony.

For the purposes of introducing our next witness, the Chair will recognize the gentleman from North Carolina, Mr. Valentine.

Mr. VALENTINE. I thank the Chairman for recognizing me. I have the privilege of introducing to the Members of the subcommittee, and the staff, and others who are here, a truly outstanding citizen of the State of North Carolina, who, since 1991, has been Mayor of the town, or city of Chapel Hill—it's probably a city now.

This witness, the Honorable Kenneth S. Broun, is a member of the University of North Carolina Law School faculty, which he joined in 1968. He was Dean of the Law School from 1979 to 1987. He was named the Brandeis Professor of Law in 1990. He's currently Vice President of the North Carolina Bar Association, and he holds an undergraduate and JD degree from the University of Chicago.

I'm pleased to have this opportunity to welcome you, sir, here to this Committee, and we await your testimony with interest.

Thank you, Mr. Chairman.

TESTIMONY OF HON. KENNETH BROUN, MAYOR, CHAPEL HILL, NC, AND CHAIR, TRANSPORTATION ADVISORY COMMITTEE, DURHAM-CHAPEL HILL-CARRBORO URBAN AREA

Mayor BROUN. Thank you very much, Congressman Valentine. Thank you very much, Mr. Chairman, and other Members of the subcommittee. I very much appreciate the opportunity to submit comments to you as Chair of the Transportation Advisory Committee for the Durham/Chapel Hill/Carrboro urban area. Chapel Hill and Durham are the home of the University of North Carolina, and Duke University. You may have heard of our basketball teams.

Our Transportation Advisory Committee is composed of local elected officials serving as the Metropolitan Planning Organization for our urban area, which has a population of more than 205,000. My purpose in these comments is to make two fundamental points:

First, strong support for local flexibility to meet transportation needs. Many local elected officials in our urban area enthusiastically support the local flexibility provisions in the 1991 Intermodal Surface Transportation Efficiency Act.

We recognize that this legislation represents a significant, even historic, shift toward increased local flexibility and accountability for meeting local transportation needs. We applaud the Congress for incorporating this change in the new legislation.

As an example, these local flexibility provisions have enabled us to include a 16-foot-wide, raised median, suitable for future landscaping, 5-foot-wide bikeway lanes and sidewalks, and widening North Carolina Highway 86 from two to four lanes in the Northern part of Chapel Hill. We are working to carry out long-range plans to enhance the North Carolina 86 corridor as a major entrance through our community and the University campus.

Without local flexibility and using part of the Surface Transportation Program funds, this highway project might have been five lanes of barren asphalt and concrete in a suburban, residential setting. With the features added at a limited cost, this project can enhance rather than detract from the surrounding residential neighborhoods.

Secondly, the need for strong Congressional support for implementing the Intermodal Surface Transportation Efficiency Act pursuant to legislative intent. We have had some difficulty in achieving a new relationship with our State Board of Transportation and Department of Transportation based upon the provisions of ISTEA.

We believe the North Carolina Department of Transportation has not fully followed provisions of the new law regarding joint decisions for transportation improvement programs scheduling future projects. In addition, there has been a slow acceptance of the provisions allowing us to decide, in consultation with the State, the use of direct funding allocations under the Surface Transportation Program.

For example, the use of direct funding allocations for the North Carolina 86 project, to which I've referred, was made possible, only when our committee agreed to the delay of another project and the commitment of four years of direct funding allocations to existing projects. This State's insistence that the direct allocation funds be applied to existing projects in this manner is in direct contravention of the intention of ISTEA that its funds be treated as new resources to be allocated at the discussion of urban areas.

A difficult point in our negotiations with the Department of Transportation was the State's threat to withhold all transportation funding for our urban area because we objected to one road project—the widening of the U.S. 15/501 Highway, south of Chapel Hill. We subsequently reached a compromise regarding that project, but the underlying issue of following the new legislation is unresolved from our perspective.

With new leadership in the North Carolina Department of Transportation this year, we will continue to work to resolve our differences through negotiation. However, we ask that Congress exercise its oversight responsibilities to insure that the pending regulations to implement the Intermodal Surface Transportation Efficiency Act will meet your legislative intent.

We seek two specific actions. First, the State of North Carolina Department of Transportation stated it could not provide the MPO with estimates of future anticipated revenue prior to the development of the State Transportation Improvement Program.

This lack of financial information has limited the ability of the Durham MPO to develop fiscally-constrained TIPs. It has also limited our ability to proceed with project selection, as outline in ISTEA.

The implementing rules should have a clear requirement that State governments give Metropolitan planning organizations "best faith" estimates of Federal fundings for use in developing the urban area transportation improvement programs, which identify specific projects, timing, and project cost. We believe such a requirement would be consistent with ISTEA.

With firm funding estimates from the State, Metropolitan planning organizations will be in a stronger position to make firm plans with greater reliability in future scheduling of projects.

Secondly, in order for project selection to be undertaken by MPOs, they must have the flexibility to allocate funds to those projects of the highest priority to the urban area. The ability of the States to arbitrarily remove funds, diminishes the process of project selection.

Project selection is a process that Congress specifically granted to large MPOs with the intention of guaranteeing that local transportation needs were met. State governments should be prohibited from deferring or removing previously planned transportation projects from an urban area because of a disagreement with the Metropolitan planning organization's priorities for new projects.

Because of the large amount of State and Federal transportation funding allocated by State agencies, they tend to have an advantage in negotiations to reach agreement on transportation plans and project selection. This is particularly true in North Carolina, where there has been a well-established process for developing a State-wide TIP, and an understandable reluctance by the State to enter into a truly cooperative process.

We recognize that Congress cannot change some aspects of this environment, but we believe it would be important for Congress to reaffirm the principles of ISTEA and support the prohibition I have suggested. We believe such a position would help deal with the potential problem exemplified in the threat that we would lose all transportation funding because of a disagreement about one project.

Finally, I want to emphasize the strong feelings of many local elected officials in our urban area about the need for balanced transportation plans that include and promote public transit, ride-sharing, bikeways, and walkways, as well as necessary highway projects. Public transit, bikeways, and walkways are important to us as key strategies to address traffic congestion, highway safety, energy conservation, and air quality issues as a Nation, and in Metropolitan areas, such as the Research Triangle of North Carolina.

As we subtly increase our local support in these areas, we very much need the support and intergovernmental collaboration envisioned in the 1991 Intermodal Surface Transportation Efficiency Act.

Thank you for the opportunity to submit these comments.

Mr. RAHALL. Thank you. Thank you very much, Mr. Mayor.

First, since I am a graduate of Duke University, could you tell us a little bit more about the basketball teams in the area? [Laughter.]

Mayor BROWN. Well, I'm not going to ask for a time-out in these proceedings, I will say that. [Laughter.]

Mr. RAHALL. In my opening statement, you may have heard, I noted the fact that ISTEA empowered the localities with more flexibility, but apparently, you've had some different experiences. I believe your MPO represents an area of over 200,000 people, is that correct?

Mayor BROWN. That's right. This is our MPO—we are at the limit. I believe that it's 200,000, and we are just over that, sir.

Mr. RAHALL. Okay. I know it's been some time since I graduated from Duke, but I just wanted to make sure I knew the population of the particular area.

Mayor BROWN. That's right.

Mr. RAHALL. ISTEA, as you know, specifically states that all projects, with the exception of those on the national highway system, are to be selected by MPOs representing over 200,000 population in, of course, consultation with the States.

Mayor BROWN. That's right.

Mr. RAHALL. The problem, as I understand it, that you've experienced relates to the State—the State threatening to defer or remove previously planned projects—previously planned projects which pre-date ISTEA, is that correct?

Mayor BROWN. Well, it is—what has happened in North Carolina, Mr. Chairman, is that there has been a long history of a strong State transportation improvement program—there are projects that have been listed on that program. The State is in the practice—and it has been the history for them to select projects.

What has happened is that projects—is that the local MPO has listed projects on a priority listing, and removed certain other projects that may have been on the State transportation improvement program, submitted them to the State, the State has then indicated, "Well, we want to do the projects on our transportation improvement program, not yours," and have then threatened to withhold funding for our projects based upon their transportation improvement program.

In other words, the State is making the—effectively, the final decisions as to which projects within the urban area are getting funded, and it's our opinion that this process gives too much control to the State. It becomes not consultation with the State—in essence, the MPO has relatively little say as to what projects in our area actually get done, and that's our concern.

Mr. RAHALL. So you're actually defending the concept of the MPO. You like that local planning?

Mayor BROWN. We are very much defending the concept of the MPO, and we're very much defending and supporting the concept that there ought to be—essentially, local control over most projects within our urban area.

We recognize that there is a need for consultation with the State, and we recognize the State's interest in dealing with regional and State-wide problems, but as we understand ISTEA and the MPO process, it is our urban area that ought to be selecting the projects

that are to be done in our area, and we feel that as the Act has been interpreted by our State Department of Transportation, that's not happening. They're still making the selection.

They're calling us in for consultation, they are listening to us, but ultimately, it's the State's decision, and that's our concern, sir.

Mr. RAHALL. Are the MPOs not being given sufficient information in the beginning then, as far as—

Mayor BROUN. Well, that's certainly a very large part of it. What our concern is—initially, in North Carolina, we are not given any figures—we are not given what monies we would have to spend. As we understand project selection under ISTEA, there is to be a—we are to have fiscally-constrained project selection. The problem is we don't know what monies are available.

We don't have that information available, and therefore, we don't know what projects to select. We are giving the State a list of priorities, they are then selecting projects, and it is only then, we find out that we have X amount of dollars.

Mr. RAHALL. But there has been sufficient consultation then, is that correct?

Mayor BROUN. There is consultation, but there's not sufficient information given to us on the amount of revenues available early on—that's been the problem.

Mr. RAHALL. There's been no opportunity yet to update the Transportation Improvement Program, TIP, for a two-year period, as is—

Mayor BROUN. We have had an opportunity to update the TIP. The problem is in project selection based upon that TIP.

When projects are selected based upon the TIP, it is essentially the State that is making the project selections off of the Transportation Improvement Program, and that's our concern.

The other aspect of it is that the State is—for example, may be selecting projects that we don't have as high on our priority listing, from the TIP. If we then resist the State's selection, there have been threats to withdraw money from our urban area and place it elsewhere in the State—elsewhere within the division, and that's the kind of concern that we're running into.

There is communication that takes place, there is consultation that takes place, there is a joint preparation of a TIP, but in essence, what's happening is that the State is creating a TIP, making the selections from the TIP, and the urban area has relatively little final say as to what the selection process is, and that's our concern.

We would like some Congressional oversight to deal with that, or at least regulations that would indicate that there is more power of selection within our local urban region.

Mr. RAHALL. I follow you. Thank you, Mayor.

The gentleman from Wisconsin?

Mr. PETRI. Thank you for your testimony. I have to comment, as Chairman Rahall and I were both on the Conference Committee, that it's not that this issue was ignored at the time of consideration of ISTEA. It was hotly contested and debated, and we attempted to find some reasonable accommodation between people who wanted strong Metropolitan Planning provisions and States which had a legitimate concern, too, because they have a State-wide responsibility to provide much of the funds as well.

Just one question on the actual operation of your Metropolitan Planning Organization right now—and maybe because of your difficulty in two-way communications, it's not fair to draw too much of a conclusion from this—but have you had any difficulty at all in meeting planning deadlines?

Mayor BROWN. I'm sorry?

Mr. PETRI. Have you had any difficulty, as an organization, in meeting planning deadlines for project selection and other project planning responsibilities?

Mayor BROWN. In the initial year of ISTEA, the deadlines came at us very quickly, and I don't think that in that initial year, we were given enough time. I think—to be fair, I don't think the State was given enough time either.

In this year, when we have had another year of experience, I believe it's—the total time is not so much the problem, the question is, though, the timing of the decisions under the State.

Under the North Carolina Department of Transportation's view, they are preparing a State-wide transportation improvement program, first. We then react to that program.

We don't think that's the right order of it. We think that we ought to be presenting a local transportation improvement program, and the State ought to react to it, so it's a timing problem rather than not having enough time—at least, as it's presently set up.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. No questions.

Mr. RAHALL. Okay.

The gentleman from the Virgin Islands, Mr. de Lugo?

Mr. DE LUGO. No questions.

Mr. RAHALL. The gentleman from New York, Mr. Nadler—have any questions?

Mr. NADLER. No questions.

Mr. RAHALL. Okay.

Mayor, we thank you very much.

Mayor BROWN. Thank you very much, Mr. Chairman, and Members of the Committee.

Mr. RAHALL. Our next panel is composed of the Honorable Andrew Warren, Chairman of the Bucks County, Pennsylvania Board of Commissioners, and Chair of the National Association of Counties Transportation Steering Committee on behalf of the National Association of Counties; and joining him on the panel will be Mr. Robert Kochanowski, the Executive Director, Southwestern Pennsylvania Regional Planning Commission, National Association of Regional Councils.

Gentlemen, we welcome you to the subcommittee, and you may proceed as you desire.

TESTIMONY OF HON. ANDREW WARREN, CHAIR, BUCKS COUNTY, PENNSYLVANIA BOARD OF COMMISSIONERS, AND CHAIR, NATIONAL ASSOCIATION OF COUNTIES TRANSPORTATION STEERING COMMITTEE, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES; AND ROBERT KOCHANOWSKI, EXECUTIVE DIRECTOR, SOUTHWESTERN PENNSYLVANIA REGIONAL PLANNING COMMISSION NATIONAL ASSOCIATION OF REGIONAL COUNCILS

Mr. WARREN. Thank you, Mr. Chairman. It's a pleasure to be here today. I am Commissioner Andrew Warren of Bucks County, Pennsylvania. Today I am representing NACO, where I serve as chair of the Transportation Steering Committee. I'm also a member of the Delaware Valley Regional Planning Commission, which is the MPO for the greater Philadelphia area, and a member of the SEPTA Board.

I know that Members of the subcommittee do have copies of our testimony; therefore, I will refrain from reading it, and just try to communicate the essence of each point.

The National Association of Counties has long been a supporter of ISTEA implementation. As you may be aware, 43 percent of all the roads in the United States, 45 percent of all the bridges in the United States, and one third of all the transit agencies in the United States are, in fact, under the auspices of counties.

ISTEA is just a year and a half old. It may be a little early to make final passage of its effectiveness; however, NACO has had a number of workshops, and have interviewed selected officials throughout the country, and we do have some opinions as to how it seems to be progressing. Not surprisingly, implementation of ISTEA, from the counties' point of view, will vary from State to State. I think we've heard some of that from our speakers already this morning.

I'd like to cover just a few topics upon which our members have commented including funding, State-local relationships, planning and MPOs, flexibility, enhancement, transit, and rural issues.

Concerning funding, I think—at the risk of differing with Congressman Baker to a slight degree, I'll quickly rectify that and agree with him on another point—but from our standpoint, expectations of funding were great. They were high and reality has been somewhat disappointing in that there seems to be, from what is appropriated and what, in fact, is being able to be spent, we have some differences.

We suggest three actions be taken. First, the passage of the President's stimulus package; second, that the fiscal year 1994 funding levels proposed by the Administration be adapted and that—the point that I would agree with the Congressman on is that the two and a half cents be recaptured for transportation purposes from the gas tax, and not be used as a deficit-reducer.

Concerning State and local relationships, it was very positive for State-county relationships in urban areas, but there's some work to be done in rural areas. The Federal Highway Administration must stay vigilant in overseeing the appropriations to the rural areas. Several States have poor relationships—rural New York, for one, and Hines County, Mississippi has some difficulty with the oversight from the State.

As far as the planning and the MPOs, the law is clear that the State must cooperate—as the Mayor had stated, must cooperate with local government in project selection. Our members expect that to be a serious process, and it's some question of just how we define cooperation. There are examples, as the Mayor pointed out, where cooperation becomes total implementation.

Again, as I say, where there is a strong MPO, the process does, in fact, seem to be working, such as the Chicago, Kansas City, San Francisco Bay areas; however, in the Delaware Valley, our MPO is made up of the four suburban counties, the city of Philadelphia, and five counties from New Jersey, and the Secretary of Transportation from each of the States. The two States have a great deal of influence there.

In some other areas which have less experience with MPOs or where the MPO has had little to do, those areas are not yet operating as envisioned by the law. We have also heard several examples of boundary problems, specifically in those areas, where under the provisions of ISTEA, counties which consider themselves rural, now find themselves put together with some Metropolitan areas.

As far as the flexibility aspect of the program, it seems to be working, particularly between highway and transit. We would expect it to occur more as the law is fully-implemented, particularly if the Federal transit program continues to be substantially underfunded. We've got to get—as I've said — the full funding of ISTEA.

As far as the enhancement aspect of the law, there are some positives, but several States have not informed, nor shared with counties the availability of the funds, and an example there would be in rural New York, again. Someplace where that does work quite well, however, is in Lane County Oregon and some of the far West counties.

As far as the transit program is concerned, we have found that it's working relatively well—usually, the State isn't involved as much. I'm not certain that there's a correlation there, but one might make a case of that.

However, we do need to reiterate that transit needs substantially more funding in the program in order to provide a reasonable level of services to meet the requirements of the Americans with the Disabilities Act and the Clean Air Act. Mr. Chairman, if I could just deviate for one minute to ask you as Chairman, and the Members of your subcommittee, to look to an issue that I believe is absolutely screaming out for attention from the Congress, and that is the implementation of trip reduction as it applies to the Clean Air Act, and how that would relate to funding.

There is a real horror story in the Delaware Valley, where in 1987 and 1988 air quality standards, we were a nonattainment area. Four years have now gone passed, and the air quality has improved. We are—in fact, admittedly by the EPA—a borderline non-attainment area. The air is much better, but they are still saying that the businesses of over 100 have to have the 25 percent trip reduction within two years or they're going to get a \$20,000 a day fine.

I will tell you that in our suburban counties, it is an absolute impossible task to meet the trip reduction requirement. If I were an owner of a business and I put in locker rooms, so people could ride

their bikes, if I identified "park and ride" lots and I did everything that Congress had envisioned, and my employees said, "The heck with it. You're not going to tell me that as a reason for my employment, I have to give up access to my car," then I, as the owner, would be fined. That isn't fair.

It isn't right, and beyond all of that, it is now four years later, and the air quality is admittedly better. It's like going to a doctor in 1988 and having a doctor tell me I have, malaria, for example, and then for some reason, I don't go back to the doctor.

I come back in 1993, and the doctor says, "Oh, yes, you've cleared up, however, I noticed four years ago, you had malaria; therefore, I'm going to start treating you for malaria, even though you don't have it"—it's nonsense. We'd look for malpractice if a doctor did that.

I suggest that, without Congressional intervention real quickly—we will have real problems. If we must live under those things, we need your help, sir, and we need it badly because at risk, as you are aware, is ISTEA funding.

My concluding aspect of how ISTEA is working after a year and a half would be with rural issues. The bridge aspect of ISTEA seems to be working quite well. With the elimination of secondary highway programs, there's no longer a program which specifically targets rural counties and areas that have roads to maintain. I would recommend specifically, that a clarification of the law be made by Congress, because what's happening in some States—they're saying, "Well, if a major road goes through a rural area, then that qualifies for rural dollars"—not to the rural community, but to the State.

We don't believe that's the way you all intended the law to be written, and we would ask your help in clarification—specifically, clarifying that these funds be spent on secondary system-type roads.

In summation, relative to funding levels, we need full funding, and we need the two and a half cents. As far as State-local relationship, the rural areas need some attention. MPOs are fairly-successful, but need some real areas to make sure the State doesn't dominate them. As far as the flexibility, the dollars exchange, things seem to be working as envisioned. As far as enhancement, the aspect varies from State to State. Transit seems to be working as planned, but is woefully under-funded. And as far as the rural aspect of the program, it must be monitored and the law clarified.

With that, I will include my comments and yield to my good friend from Pittsburgh, and be happy to answer any questions at the conclusion of his comments.

Mr. KOCHANOWSKI. Thank you, Mr. Chairman. My name is Bob Kochanowski. I am the Executive Director of the Southwestern Pennsylvania Regional Planning Commission, the MPO in the Pittsburgh area, and I am also co-Chair of the National Association of Regional Councils' MPO Committee, and that's been a very challenging task this year because, of course, the MPOs need to meet frequently and be coordinated on much of what we're doing under ISTEA, and the National Association of Regional Councils is doing a lot to try to facilitate that cooperation and coordination

among the MPOs—in fact, the information we gave you includes some summaries of all the ongoing activities.

I applaud you for holding an oversight hearing, because if there's anything at this point that truly needs oversight by Congress, it's something as complex and significant as ISTEA. There are many, many issues in implementing this kind of revolutionary legislation that requires your constant attention, and I'll try to raise some of them to you today.

ISTEA means change, and change is never easy, and radical change is even harder. ISTEA has generated some resentment among people who learned the old rules, acquired the capabilities, and built their careers on the earlier system. As some highway building interests see it, all the good work they've done over the years is suddenly being ridiculed as narrow-minded, out of step, and even worse, and of course, that makes them angry.

There's no doubt that the interstate system that we previously knew and the program we knew was a class act. It connected our Nation, built highways across this Nation with a policy that was very clear and straight-forward. We can now get across this country with relative ease. The problem is that if we live in urban areas, we can't get to work on time, and we have other problems.

If you live in an urban region, you're faced with a variety of ills, many of them which can be attributed to previous policies. America in 1956 was fundamentally different than the country we live in today. It was a simpler time. National goals were much more straight-forward, and very few people argued against them.

The interstate program had strong public support and Americans loved the freedom the new highways offered for auto travel in suburban living. America was also a much more rural Nation then. Most Americans lived in small towns. Only about 60 percent lived in urban areas. Today, that figure is closer to 75 percent.

Although a number of big city populations have declined during that time, their Metropolitan populations have continued to grow. Today, our urban areas suffer from congestion and air pollution, and other environmental and infrastructure problems. The same highway program that brought us our interstate system also produced an unattended effect. It often distorted the funding of public works. Focusing on building a world-class interstate system contributed to urban problems in many regions—sprawl, energy waste, air pollution, deteriorating infrastructure, and more. Over time, a recognition of those growing urban problems helped to cement those coalitions, which passed the Clean Air Act in 1990, and ISTEA in 1991.

What those acts say, and it's a message we must listen to very carefully even now—yes, we need to identify a national highway system and keep it in good repair, but we cannot continue expanding at the expense of our problem in urban regions, and we must have more flexibility and tools to deal with the urban problems.

Our national economy is the sum of our regional economies. Improving mobility within those regions is just as much in the national interest as preserving mobility between them. We need an urban counterpart to the national highway system—something that will do for travel within our Metropolitan areas, what the national highway system does for interstate travel.

ISTEA defines a multi-modal transportation system and provides us with the tools to improve that system. It does not exclude the possibilities for new highways, but it recognizes the modes of travel that would make sense in Metropolitan areas may be different from those outside of them.

Congress is obliged to adopt that national highway system within two years, and that's a worthwhile assignment, but we must bear in mind that our resources are limited. We must avoid the danger of becoming preoccupied with a national highway system at the expense of our regional needs. A national highway system is not the centerpiece of a new law, it's the parity of urban and inter-regional needs, which is really the heart of ISTEA.

That shift towards placing the needs of urban areas on a par with national priorities has led to a major change in a decision-making process. It's truly an experiment in decision-making and self-governance at a grand scale. If it succeeds, the Metropolitan planning effort, which ISTEA requires for project selection, could represent a new day for democracy.

As you know, Metropolitan planning organizations have drawn the assignment for formulating regional plans, but MPO is very widely in our resources, credibility, and stature. Some are only held together by the promise of Federal funds and whatever regional statesmanship is politically practical. For many, the authority and responsibility for flexible decision-making is as much a curse as it is a blessing.

This is particularly true in regions where the air quality mandates imposed by ISTEA, tied to the Clean Air Act, run counter to the prevailing local attitudes that favor new growth and development. To succeed, MPOs need nurturing and strengthening.

We must strive to broaden their constituencies and balance their interests they represent. We must see that their composition helps them carry out their assignment of flexible decision-making in a credible fashion—that includes representation for both urban and rural areas, highway and transit interest, proponents of growth, as well as the offenders of the environment, State and local government, and local leaders, and many MPOs are doing that.

In Pittsburgh, for example, we did address this issue that some of you've heard about—the issue of balance, the issue of center city versus rural and the like, and we think we've made some progress on it. We've added additional members from the center area to our Board, added the Governor's office, added transit agencies, and we've created a high-level public-private steering committee of community leaders to guide this development of a new plan that we think has some real balance to it.

Now whether we can pull that plan off within this time period required under ISTEA still remains to be seen, but we have made some new changes and adaptations to go towards it. It's difficult to do. There's a set of major new pressures that are created on MPOs to bring this about. Let me raise some of them, and I think you're probably aware of them.

Fiscal restraint—one of the big requirements in ISTEA. You heard earlier, some of the discussion about, you know, how we're having difficulty getting information from the State, but just look at the internal pressures on an MPO that fiscal restraint imposes.

It means no more wish list. It now means that local elected officials—county commissioners, mayors, and the like—now have to change their entire political decision-making process. They can no longer just be advocates of projects and tell the State “do this for me,” and use it as a political tool to become good friends and neighbors that are constituents. They now, within the context of an MPO, must trade off these very difficult priorities and make these decisions of priorities. It’s very difficult for them to do, but it’s a very desirable thing. It’s very intense for them.

The Clean Air Act requirement, I think you all know what that means. It varies by area, depending on how we stand and what the mandates are, but that’s really inconsistent with most political lifestyles. Even though it’s a national goal, in many areas the constituencies believe, as you’ve heard some earlier, that economic development is equal or more important, that the air is cleaner, and while MPOs can really say “The devil’s making me do it,” it makes it very difficult for elected officials to stand up to those kinds of political pressures in some areas. Some areas will be able to do it, others may not be able to do it quite so well.

These six management systems that are imposed by ISTEA, four of them are really asset management systems. The pavement, the bridge, the highway, and the safety, in essence, can be considered asset management. But two, the intermodal and particularly the congestion management system, have real relevance to our decisionmaking process. If carried out properly, it means we’ve got to look first at the existing systems and look at their function and purpose not only from highway level of service, as we’ve often done in the past, but from the perspective of the user. How important is that system to a transit rider in making his trip? How important is it to a person that can’t get to a job and has no accessibility, but could have accessibility under improved systems? How important is that system in terms of creating the kind of growth and development patterns we want to achieve for future development?

Those are all components of a good congestion management system, and if properly implemented, it means we change the whole thrust of transportation decisionmaking away from speculation about new economic development highways and toward better managing and incrementally improving what we have. That is not easy in many areas where the whole thrust of thinking for decades has been new highways and the like promote economic development.

Then, of course, there’s the incidental project allowance’s enhancements and requirements that the other modes be given a seat at the table. This is new and unique for metropolitan planning organizations and for decision makers. Up to now, they’ve only had to worry maybe about trading highway and transit off. Now they’ve got 10 percent of money being required for enhancements, and they’ve also got the obligation to listen carefully what the freight, the trucker, and the rail interests are saying, bring them to the table within that limited amount of money, and perhaps give them a share of that funding. All these are intense pressures for MPOs to deal with in the entirely new context of decisionmaking at a statesmanship-like level.

On top of this, this whole process has to be carried out in a fish bowl of public decisionmaking. We’ve got to reach out in a proactive

way and bring the public into this process. Now, that can have both pluses and minuses. The minus is, of course, that a lot of groups feel empowered by ISTEA, particularly environmental groups and the like, and they feel that they're entitled to a seat and a strong influence in this decisionmaking process, and often that can have negative effects for people that want to build major highway projects and the like. The positive side of that is if you can build true consensus within MPOs and bring these groups together, you can create a political pressure that supports the decisionmaking in a way that can be positive. The difficulty is how you do that and how you pull it off.

The bottom line is the problem is—and the one message I want to leave you today—we've got to do all this, according to the latest draft Federal guidelines, by October 1 of 1993. It's almost an impossible deadline. These final guidelines won't even be given to us until sometime this summer, even though we see them in draft form and have a lot of comments on them now, and in a matter of months we've got to carry out this comprehensive planning process, meet all those bottom lines of ISTEA, and have these adopted plans by October. We think that's unrealistic. We don't think it's critical that the transportation plans be done by October, particularly since the conformity requirements and many other requirements of the act—the statewide plan and the like—are not required until a year later.

Now, what we're saying to you is that we're not trying to buy off or beg off the fact that we have to meet the Clean Air Act requirements, we have to do all the other obligations, the management systems and the like. But, believe me, these kinds of processes, if done properly in a new process, take time. They take resources, they take commitment and a whole new change in decisionmaking process. What we're asking you today is that this committee, in your oversight responsibilities, take this seriously. Take a look and hold some hearings and find out the status of where we stand region by region across this country in meeting this Clean Air Act and the planning process, and I think you'll find that many regions are having extreme difficulty in doing this within this period of time and meeting the mandates of the Clean Air Act.

Now, we're not saying you should throw them out, but what we're saying to you is you ought to look at these draft regulations, you ought to look at Congress' mandate for oversighting the act and try to bring to this process more time to allow ISTEA and this revolutionary new process to develop what's truly considered the comprehensive planning requirements. You're probably going to get certain environmental interests saying that we don't favor time extensions because, in essence, we favor the Clean Air Act and meeting those deadlines. We're not saying that at all. In fact, we're saying that the danger is if many urban areas fail by meeting these plan requirements by October, there could be much more pressure to throw out the entire new concept of ISTEA than if allowed enough time to let it work properly with the proper support.

So I think we must accept ISTEA and the Clean Air Act as the law of the land. We must continue to push to try to bring together these many intense pressures in urban areas and put together this

fragile process, and I think it's up to this committee and many others to cooperate and give us final oversight on time.

I would also suggest to you that the new DOT regulations that require the details of this planning process, the regulations on the management systems, the statewide planning regs and the metropolitan planning regs, are now published in draft form. As the MPOs, we've been meeting to gather our thoughts in detail on these regs. We've coordinated our comments on them with various groups, like the Surface Transportation Policy Project and other groups, and we're transmitting some comprehensive comments on those regs very shortly to the DOT. I suggest that this committee view its oversight responsibility very seriously, look carefully at how we stand in those regs and how we stand in meeting this process by October 1, and I guess my paper defines a lot more detail on that.

I'll conclude at that point. Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, gentlemen.

Let me begin with you, Mr. Warren. Actually, I'm going to begin at the end of your testimony, because you made mention there of a particular concern to me, representing the rural area that I do. I served a number of years on the Interior Committee with Representative Kostmayer, so I'm quite familiar with Bucks County, and I've heard a great deal about your home county. I do not believe that it is as rural as the counties that I represent in the southern part of West Virginia, and for this reason, if you are expressing a concern that the old Federal aid secondary system could be shortchanged under ISTEA, then of course I'm quite concerned as well, and you did catch my attention if that is your concern.

I would venture to say that the intent of the law is not being fulfilled if States are allowed to spend STP Program money for maintenance work on an interstate that happens to run through a rural area rather than being used on the Federal aid secondary road. I guess my question to you, then, if that is happening—and you mentioned it as a concern—and if that is how the law is being interpreted, who is interpreting it in that manner?

Mr. WARREN. I think that's the way the law is being applied in some States. As I say, NACo—National Association of Counties—has held conferences, interviews, and so forth, and this is some of the feedback that we're getting particularly from—not so much from West Virginia, but from rural New York, among others. That was a real concern, and you have obviously stated it far better than I. If the road goes through the county, some States are saying, "We'll take the funding for that," and that is not the way it was to be, in our opinion, as you are well aware.

Mr. RAHALL. But, again, who, in your opinion, is interpreting it in that manner? Is it the State that's doing it?

Mr. WARREN. The State and, to a degree, the Federal Highway Administration.

Mr. RAHALL. Well, you know, that does concern me a great deal—

Mr. WARREN. Us also.

Mr. RAHALL [continuing]. And I would respond that it's my desire to seek an interpretation from the Federal Highway Administration on this.

Mr. WARREN. That's what we ask. If you all could clarify or restate, at least, that may bring some of the oversight people's attention up.

Mr. RAHALL. Well, I appreciate very much your bringing that to our attention. Let me ask you another question. You mentioned in your testimony that NACo considers it very important that the non-metropolitan counties or rural counties be brought into this process, and then later on you mentioned problems that do exist, such as boundary problems. Would that not be a problem if you're going to include non-metropolitan or rural counties in the process?

Mr. WARREN. In the first 15 months of—

Mr. RAHALL. In other words, how would you include them in the process?

Mr. WARREN. Probably we just need some more time, as Bob had pointed out, to work that out. In the first 15 months, to just bring in a rural county to meet the 200,000 figure, often at the early stages some of them have been overpowered by the larger metropolitan area. I think that can be worked out. We are seeing some progress by rural counties once they understand the process, and probably time will alleviate that to a degree.

Mr. RAHALL. You've mentioned and credited FHWA with good explanations of ISTEA and good vigilance. You do state, though, "We would urge continued vigilance in seeing both the letter and spirit of the law are carried out." Do you have specific details on that?

Mr. WARREN. One was the one which we spoke about, rural roads going through. That one particularly has got to—

Mr. RAHALL. That's a major one, yes.

Mr. WARREN. That's right.

Mr. RAHALL. Any others?

Mr. WARREN. I'm not sure who's involved with the clean air aspect of a non-attainment area, but that is an issue that must be looked at or we are going to have—in the Delaware Valley we will have major economic chaos, because, frankly, it cannot be met. You know, Congressman Kostmayer would say that parts of Bucks County are very rural. Pennsylvania is the most rural State in the United States, and we can't get 25 percent of the people out of their cars, but yet we will be losing money. It is an absolute nonsensical hurdle to jump over, particularly when EPA will admit that the conditions in 1987 do not exist in 1993, but we have to meet them. That's nonsense, and we need your help to get that clarified.

Mr. RAHALL. Well, I certainly agree with what you said in your testimony with regard to your three points in which you recommend that we adopt the President's stimulus package, we fully fund ISTEA, and recapturing the 2.5 cents in the gas tax for transportation purposes. I would add that I believe a great deal of progress is being made in all three of these areas. Of course, we know the problems with the stimulus package this very day, but certainly in the latter two, under our full committee chairman's leadership, Mr. Mineta, we're seeing great progress made in those areas, and we appreciate your support.

Let me ask Mr. Kochanowski questions, if I might. You suggest in your testimony that the membership of MPOs be broadened to make it more balanced and representative of a wide range of inter-

ests. Do changes need to be made in the statutory requirements included in ISTEA to ensure that this occurs?

Mr. KOCHANOWSKI. I don't think so. I think ISTEA gives appropriate response to that change. We, for example, internally examined ourself under ISTEA and changed somewhat the composition of our board to give center areas a little better representation. ISTEA, as you probably know, allows existing grandfathered MPOs to reconstitute themselves if 75 percent of the population, including the center city, chooses to reestablish a different MPO. You have that flexibility under ISTEA.

There are some that would argue that ISTEA is still a problem because center areas are underrepresented, but I think that's up to—I would point out, Mr. Chairman, that an MPO has a great deal of flexibility and decisionmaking authority under ISTEA, and it's got to find its own level of how it structures that. It's got to learn how to truly make regional decisions on its own, and if MPOs can't cooperate on something as elemental as that, they're going to have difficulty anyway. I think in most cases MPOs will find their level to be able to do that properly.

Mr. RAHALL. So, bottom line, you're not against MPOs. You think that's a viable concept, and you would support just broadening their base.

Mr. KOCHANOWSKI. Yes. Again, another way we did it is to create a high-level advisory committee of public and private leaders, and we've got corporation presidents, university heads, agency heads, and citizens on this 40-some-member high-level committee that is a force in itself that will recommend a plan to the MPO, and that's very balanced. We try to do it that way.

Mr. RAHALL. But in striving to seek this balanced and broadened representation, you don't find any dangers of conflict or gridlock?

Mr. KOCHANOWSKI. Well, I can't guarantee that. There may be in some cases, but by and large I think most MPOs will find the way to restructure itself to make the decisions if there's cooperation there. I couldn't assure that in some cases there wouldn't be.

Mr. RAHALL. Thank you.

The gentleman from Wisconsin?

Mr. PETRI. Thank you, Mr. Chairman.

I just wanted to say I appreciate your testimony. Among other things, you both mentioned at several points in your testimony problems with Clean Air Act compliance and the relationship of that to ISTEA, and called upon us to try to prevent problems down the road. Could you sketch out, if it's possible, in some greater clarity what will happen if everything stays the same and we do nothing? I'm sure that won't be the result, but let's say that in fact no changes are made. Congress does not act. What will really happen so far as people in your areas are concerned, in your opinion?

Mr. WARREN. For the Delaware Valley, the four suburban counties in Philadelphia and the City of Philadelphia—

Mr. PETRI. Environmentally and economically and as it would affect quality of life.

Mr. WARREN. If there are no changes and if we are still being judged by the quality of air that existed four years ago, by November of 1994 every company that has over 100 employees must have a plan to reduce car trips to their company between 6:00 in the

morning and 10:00 in the morning by 25 percent. Now, I will be happy to send to you all a chart. We've just gone through this.

In our clean air attainment area with its three and a half million people, you have the City of Philadelphia surrounded by suburban counties. Mayor Rendell is very concerned that if he has to cut by 25 percent, he can't do that either, because they already have public transportation, et cetera. The fine for a company that does not comply, no matter how hard the owners may or may not have tried, I believe is \$25,000 a day for not reaching that. The State fine is to not get ISTEA funding, similar to the gas tax thing, as I understand it.

My point is, first of all, the conditions don't exist now by which we are being judged. Second of all, we are actively working with public transportation to reduce car rides, et cetera. We have cleaned our air, and we've got to be judged that way. Where we need your help, Congressman, is we have agencies tripping over themselves. For example, in Bucks County we had a township, the county, and SEPTA—the public transportation agency—all ready to build a 500-car parking lot, a new train station. All three levels of government and the private sector were working together, and it was all set to go. The funding was there, the county was going to sell the land, SEPTA would build it, Wa-Wa was going to put up a place to shop, and that would have taken 500 cars off of Interstate 95, a major air polluter.

All plans were in place, and then someone said, "There's a cattail over there. There's a red fern," and it just happened to be that part of the land that the county was going to give for this parking lot was a wetland. I call it a swamp. We have cattails all over Bucks County. I said, "This is nonsense," but yet EPA came in and said, "You can't build your parking lot that's going to take 500 cars off of the highway and clean up the air, because you've got some cattails there." We would have taken the cattails and planted them in upper Bucks county and made another area.

That's where government keeps tripping over itself. We need your help in those areas. We need your help for realistic interpretation and implementation of acts.

Mr. KOCHANOWSKI. Mr. Petri, could I answer your question briefly? I think in the Pittsburgh area we're a modern non-attainment area for ozone, and our degree of the problem isn't nearly as difficult as in Philadelphia, but I can say generally that much of our strategy for emission reductions will come from State legislative actions on such things as enhanced inspection, maintenance, and reformulated fuels and the like, and a very small proportion is expected to come from the transportation demand kind of strategies that most professionals really recognize are a small part of this thing.

But across the country, NARC is serving its various MPOs and the like and seeing where they stand, and, quite frankly, many of the larger ones in non-attainment areas will have difficulty in meeting this plan requirement by October that includes those emission strategies that will achieve the required emissions reductions. By and large, much of that delay is caused by EPA's failure to promulgate the conformity guidelines in time, but, by and large, a good part of it has to deal with just the pure time needed to bring

various statewide emissions inventories, emissions budgets, and statewide strategies for the kinds of things that are really significant to this to bear. There just isn't enough time by October to do these sort of things, and the danger is that many MPOs will fail at meeting that deadline unless there's some reconsideration of that plan extension.

Now, that's not to say we're asking, again, for the extension of the Clean Air Act deadlines and the emission reduction mandates generally speaking, but I think you have to hear that from individuals and you have to make your own judgment, because the consequence of that could be quite severe. If there are a whole host of MPOs that are failing to meet those deadlines because of a pure lack of time, you can see that there would be a spate of environmental interest in suits and the like and certain bureaucratic actions required that could really discredit the whole process. I think that's in all of our worst interest, not our best interest.

Mr. WARREN. We've come a long way in meeting in 15 months, and I underscore what Bob says, we just need a little more time to get the rest of the way. But don't cut us off in the last lap, because we're distance people. We'll get you there, but we need some time to continue the work that we've done.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Kochanowski, I would like to continue to discuss MPOs. You described yours in Pittsburgh as well-represented, a partnership between public and private, which I suppose, one would desire as it relates to the different interests involved. But, correct me if I'm wrong, that comes about because your particular MPO chose to move that way.

My concern is, coming from a district where, in another issue, we see where hazardous waste sites are placed, we see where incinerators are placed and the communities in which they're placed and those people aren't represented on the commissions that make those determinations. I'm also concerned about people who have a great stake in our transportation system not being represented in the MPOs.

So the question is, while the flexibility that you described is greatly desirable, the representation from which that flexibility will then flow seems to be eminently important. How does one then reach this balance, acquiring the right representation so that the flexibility you want will flow from the MPO because it is properly represented?

Mr. KOCHANOWSKI. Well, it's an excellent question, Congressman. I don't have a clear, definitive answer how you do that except that, remember, I said earlier that ISTEA is a true experiment in a democratic process here. We're placing a tremendous burden on these organizations that have relatively little regional structure, regional balanced representation in some cases and the like, and we're asking them to make intense difficult tradeoffs, and we've just got to learn how to do that process. Even in my case, you know, maybe I overly described my process as being—I don't know whether we can deliver a plan with this structured organization. We still have intense interest between the outlying counties that truly believe in economic development highways, and the center

areas in many cases believe in transit and upgrading roads and the like.

You know, I don't know how much you can structure this thing. If you require MPOs to have balanced voting or proportional voting or some sort of a bicameral decisionmaking structure, those are all things you might consider. I would suggest to you that you give it a chance to work, and I've seen a number of examples through our MPO committees where it is happening. There are many where perhaps it isn't, I'll concede to you, but I think that's one of the things you ought to do in your oversight hearings.

I would suggest that you bring in a cross section of MPOs and let them explain to you how well they're doing and how well they're not doing. You know, I think it's important for you to get that, because you're creating a whole set of new organizations here that are empowered in a way that they've never been empowered and asking them to create their own democratic processes. I don't know whether it can be done or not. I think it can, but I have no assurances.

Mr. MENENDEZ. My concern is not so much in how one arrives at the decisionmaking, although that is of importance. The question is the representation that will ultimately lead to that decisionmaking, I'm concerned, considering, the increasing power that MPOs will be able to exert—those who recognize it already are doing it, and those who will come to recognize what their power and influence is in deciding some very important policies—that there is the right set of representatives across the spectrum so that the decision will flow in a manner that people will be able to buy into. That's really the crux of it.

I look forward to some future comments from your organization and maybe an analysis of national MPO representation.

I have one quick second question. You talked about an October deadline with ISTEA and said it was unreasonable. Assuming that the Congress were to consider an extension of that deadline, what would you consider a reasonable extension?

Mr. KOCHANOWSKI. Well, I think a year is reasonable, which would tie more to the air quality conformity requirements and also the statewide planning and management system requirements. A year would give most MPOs, I think, a reasonable amount of time to really apply these management systems, the planning regs and the like, and I don't think it would have any detrimental effect on the overall air quality process.

In response to your first question, I will say the NARC is doing some work to look at better collaborative decisionmaking processes among MPOs, and that's going to be done over the next several months and the like. There may be results of that, but, again, there's no guarantees on any of our parts.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. RAHALL. Let me just respond to the gentleman from New Jersey's last question. It's my understanding that the October 1st deadline was imposed by regulation, not in the law.

Mr. MENENDEZ. That's correct.

Mr. RAHALL. The gentleman from the Virgin Islands, Mr. de Lugo?

Mr. DE LUGO. No question.

Mr. RAHALL. The gentleman from Missouri, Mr. Emerson?

Mr. EMERSON. No question.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard?

Mr. POSHARD. I'd just like to ask unanimous consent to submit a statement for the record, Mr. Chairman.

Mr. RAHALL. Without objection, your prepared statement will appear in the record.

[Mr. Poshard's prepared statement follows:]

STATEMENT OF HON. GLENN POSHARD

Mr. Chairman and Members of the Subcommittee, I am pleased to be here this morning to hear testimony about the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

There is no way we can be competitive economically without a safe and modern transportation system. The ISTEA Act provided the means to improving the roads and bridges in our Nation . . . and most importantly, set us on our way to improving the economy and providing jobs for our many unemployed people. We all worked hard on this legislation to allow the States flexibility in achieving various transportation goals. I look forward to hearing from the various witnesses as to how well this new flexibility is working within the States and counties.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from California, Mr. Hamburg?

Mr. HAMBURG. Mr. Chairman, thank you very much.

I just want to say I'm sorry to have missed some of your testimony. I was just particularly glad that Commissioner Warren could be here. As a former county supervisor, I've had a chance to go through your testimony, and I think it's just right on. I'm particularly glad to see the steps that NACO is taking to back the President with respect to the stimulus package, the funding levels for ISTEA, and I was very glad to see you point out the important part that rural counties played in the passage of ISTEA and continue to play in trying to implement ISTEA.

So just thank you for being here, and I really appreciate your comments and your testimony.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

I found of great interest Mr. Warren's comments about the cat-tails and the problems you run into there. In Georgia the EPA seems to think that anywhere a pine tree grows is a wetland, so we can sympathize with you there. In reference to the stimulus package and the funding for infrastructure, I only wish we would have had separate votes in those areas. That is one area that I would love to see some funding in; however, to our dismay, that was not possible.

Mr. Chairman, I regret I missed so much of the testimony, but I am glad that I caught the part I did from Commissioner Warren, and I appreciate your time. Thank you, sir.

Mr. RAHALL. Thank you.

Thank you. We appreciate it.

For the purposes of introducing our next witness, the Chair will recognize the gentleman from the Virgin Islands, Mr. de Lugo.

Mr. DE LUGO. Thank you very much, Mr. Chairman.

Mr. Chairman, this afternoon I'm happy to introduce to the subcommittee our next witness. He is the Commissioner of Public Works for the United States Virgin Islands, Leo Francis. He was

appointed to that position by Governor Alexander Farrelly in June of 1989, after having served as both assistant and acting commissioner since 1987. His prior experience includes 15 years in the aerospace industry as a project manager and engineer.

Mr. Chairman, let me say that I'm very pleased that Commissioner Francis was able to fly up to be with us today. You're going to hear from an area that's very happy with ISTEA. We're particularly happy because prior to 1983 the Virgin Islands wasn't included in the Federal Aid Highway Program, and although that afforded the Territory the opportunity to begin to develop and construct roads after 1983 to Federal standards, it was not until ISTEA and its provisions as they apply to U.S. territories—and that was just last year—that the Virgin Islands could truly begin to catch up and address its real transportation needs.

Now, as this committee worked on ISTEA last year, let me tell you, I was on the long distance phone to Commissioner Francis, and I said, "We have a historic piece of legislation coming. The Territories are finally included in a way that is going to make a tremendous difference." One of the key provisions was not only the money, which is the most important provision, but flexibility, and initially there were those that didn't want that provision to apply to the Territories. As you will recall, in this committee and also in the conferences on it, we made sure that it did apply.

After that, there was a question of interpretation. The committee backed up this Member, and those that are interpreting the law came around to agree that, yes, indeed, flexibility does apply to the U.S. Territories. That's very important, because it meant that we didn't just go ahead and lay concrete, but rather that Commissioner Francis and those in the Virgin Islands and in the other Territories could creatively respond to the needs of their area.

In the case of Commissioner Francis just recently, they got a waiver so that they were able to get some 20 new buses for the Island of St. Croix, a transfer of some \$3.5 million, and this was done—the Federal Highway Administration, in conjunction with the Federal Transit Administration, authorized this transfer.

Also under this program, the Commissioner is able to respond to needs on the Island of St. Croix. You'll recall, Mr. Chairman, that when we visited St. Croix in December, we went down to Frederiksted, which had a tremendous impact from Hugo—destruction, the economy ruined—and we're trying to rebuild that, and we saw the dock that's being built. You were there with me. Well, one of the things that the Commissioner is doing under the flexibility provisions of ISTEA is that they're going to build an intermodal transportation complex right there at that dock that will dispatch buses. Tourists coming in will be able to get transportation to the rest of the island. They're also going to, under the flexibility provisions, take care of the parks there along the waterfront, beautify that. In other words, there's flexibility. We're building a lot of highways, too, on St. Thomas, Racetrack Road and so forth.

So it's a pleasure for me to welcome here before our committee, Mr. Chairman, Commissioner Francis. He's going to share with the committee today the way ISTEA has impacted on the U.S. Virgin Islands and such suggestions as he might offer that we might improve the workings of this program.

I also want to take this moment to thank you, Mr. Chairman, for scheduling these hearings to fine tune ISTEА. It's very helpful to all of us. Thank you very much.

Mr. RAHALL. Thank you very much, Mr. de Lugo.

Commissioner Francis, if we might ask your indulgence, we do have a roll call vote on the floor of the House right now, and I would like to recess the subcommittee for 10 minutes so that we can come back and fully hear your testimony without having to rush it. Thank you.

The subcommittee will be in a 10-minute recess.

[Recess.]

Mr. RAHALL. The subcommittee will come to order.

Commissioner, you may proceed.

**TESTIMONY OF LEO H. FRANCIS, COMMISSIONER,
DEPARTMENT OF PUBLIC WORKS, U.S. VIRGIN ISLANDS**

Mr. FRANCIS. Good afternoon, Congressman Rahall, Chairman of the U.S. House of Representatives Surface Transportation Subcommittee, and distinguished Members of the subcommittee. I am Leo Francis, Commissioner of the Department of Public Works for the Virgin Islands, a U.S. Territory in the Caribbean. Thank you for affording me the opportunity to appear before you today to testify on the impact the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEА, has had on the Virgin Islands.

Before proceeding further, I wish to commend Congressman Ron de Lugo, delegate to Congress from the U.S. Virgin Islands, for his diligent and persistent efforts on behalf of the people of the Territory. His vigilance and attention to the needs of Virgin Islanders has resulted in far-reaching benefits for the Territory. A good example is the ISTEА Program. Originally, the extent of the role this Territory could play in the ISTEА Program was unclear; however, due to Congressman de Lugo's efforts in obtaining clarification of the legislation, ISTEА is a success story for us.

First of all, how we are organized has a lot to do with its success. The Virgin Islands is an unincorporated territory, which affords us several advantages in pursuing ISTEА funding. The government is simultaneously both State and local; therefore, there are no layers of bureaucracy to traverse to acquire approvals for transfer of funds from one agency's jurisdiction to another, nor is transfer of types of funds inhibited. Then, as head of an agency which has dual responsibilities for both highways and mass transit, I am able to easily utilize the flexibility concept of the ISTEА legislation by making decisions as to which transfers would best benefit both highways and mass transit without any jostling for position.

Secondly, how we are using the monies made available through ISTEА will be of interest to you. We transferred \$5.1 million from the Federal Highway Administration to FTA to support our transit program. Initially, the application to FTA included \$3.5 million for rolling stock to establish mass transportation on St. Croix, \$500,000 for upgrading the bus terminal on St. Thomas, \$100,000 for design of a terminal on St. Croix, and \$1 million for expansion of the ferry terminal on St. John. Our application was further amended to include capital assets for expanded transit services, in-

cluding development of a parking management program as the centerpiece of our transportation systems management strategy.

Under the 1991 ISTEA legislation, the U.S. Virgin Islands was awarded \$87.5 million over a six-year period, 1992 to 1997. The following is a breakdown of ISTEA obligational limitation and authorizations to date. The 1992 obligation limitation is \$11.8 million; authorized for expenditure, \$11.8 million. Since we had more projects than funding allowed, we were granted \$1.6 million additional funding in 1992. The 1993 obligation limitation is \$10.9 million; authorized for expenditure, \$9 million, including \$5.1 million in transit-related projects.

At this time, we anticipate that we will be able to exceed obligational limitation by \$6 million. As a result, we can easily accommodate the additional \$2 million that the stimulus package will provide. While it is our understanding that the \$2 million authorization has been granted, the appropriate documentation to authorize expenditure of the funds has not been received do date.

For your edification, I am listing for you now the transit-related projects included in the \$5.1 million transferred from the Federal Highway Administration to FTA. On the Island of St. Thomas, renovation of phase two of the bus maintenance facility, to include constructing a second floor for administrative offices and moving fuel tanks to create an improved circulation and parking plan within the facility. On the Island of St. John, renovation of Cruz Bay ferry dock to expand the existing passenger dock to accommodate three additional ferries and construct a passenger terminal. On the Island of St. Croix, we will be purchasing an additional 15 30-foot heavy-duty advance-design transit coaches and related equipment. We'll also be performing preliminary engineering design and construction of a bus maintenance facility mid-island, in the Kings Hill area.

After further review of our program, it was evident that in order to take advantage of the quarterly funding cycle, we had to submit our grant amendment by April 1st. We identified additional tasks we want to implement this fiscal year, and the following projects have been applied for as of April 1st. On the Island of St. Thomas, design and construct a park-n-ride lot at the University of the Virgin Islands parking lot; purchase additional radios to support the park-n-ride program; purchase equipment to establish a computer network hub at our Office of Transportation; provide additional funding for phase two renovations to St. Thomas bus maintenance facility. On the Island of St. Croix, we'll be designing and constructing a bus terminal at La Reine. We'll also be designing and constructing a Frederiksted intermodal terminal located adjacent to the new pier facility to link local residents and cruise ship passengers to various modes of transportation, such as buses, taxis, vans, and tour operators.

I brought with me today a preliminary sketch of what that facility will look like, but it will be adjacent to the terminal, like I said previously, and it will be designed such that the buses will be terminating at that location. You could also procure bus passes, and there will be bus shelters, and it will also serve as a tourism facility to hand out various pamphlets pertaining to the Island of St. Croix.

At this point, something said about procedures might be helpful to other jurisdictions. Based on our experience in utilizing the ISTEA Program, the application was treated as a section 18 rural application, which has broad funding categories and is non-competitive. Unlike the States, we do not have to reach out to work with localities to enhance the program since, as mentioned before, we are both State and local. For example, after in-house discussions, we realized that we needed an amendment to the grant application to fund ongoing projects that are relevant to the transit program. We then contacted FTA and learned that we could amend the section 18 grant application quarterly, provided Federal Highway Administration funding was available to cover the cost of the amendment. Our first amendment was submitted to FTA and is now being reviewed, and we anticipate approval by the end of June.

I need to mention also that prior to the original grant approval of the \$3 million to acquire St. Croix buses, we wanted to move forward with the procurement effort prior to grant approval. We requested a letter of no prejudice from FTA, which would enable us to proceed with the procurement documents to initiate purchase of the buses before the grant was awarded. The letter of no prejudice was prepared and forwarded by FTA based on appropriate justification of the procurement effort, which involved a long lead time. Funding had to be transferred from the Federal Highway Administration to FTA subsequent to the grant application submitted to FTA. FTA then placed the funds transferred from the Federal Highway Administration into the Virgin Islands' section 18 program, which had previously contained only funds appropriated by Congress based on population. Copies of all pertinent documentation are available for your review.

Our pending plans call for several projects to receive financing during 1993 and 1994, including scenic lookouts, ferries, bikeways, buses, bus shelters, and a van-pooling program. I have assured Congressman de Lugo that we can spend our entire annual appropriation from the Federal Highway Administration together with the extra \$2 million available through the stimulus package. We are ready to go with projects such as phase one of the Christiansted bypass, South Shore Road rehabilitation, and Castle Burke/Queen Mary signalization on St. Croix, just to name a few.

I wish to take this opportunity to publicly commend Letitia Thompson, Deputy Administration of FTA's Region 2, and her staff for bending over backwards to accommodate and facilitate our projects, especially the Cruz Bay ferry terminal project, and for being so instrumental in convincing us, in view of the fierce competition in Washington for section 3 funds, that the way to go was to pursue the flexibility of the ISTEA Program. As a result, we have worked more closely than ever with the Federal Highway Administration, which performed in an expeditious and proficient manner, enabling us to place our long-lead order for buses to satisfy our commitment to the people of St. Croix for implementation of mass transit by the end of this calendar year.

Again, thank you for inviting me to appear before you, and I hope that my presentation may be helpful in assessing implementation of the ISTEA Program.

Mr. RAHALL. Thank you, Mr. Commissioner. The Chair is going to yield to the gentleman from the Virgin Islands, Mr. de Lugo, and let him proceed first.

Mr. DE LUGO. I thank the Chair for its courtesy, and I'd like to say to Commissioner Francis, I'm glad you mentioned the St. John ferry boat dock, because that's a very important project and one that you showed a lot of creativity in bringing about and one that, quite frankly, could not have happened if it weren't for the flexibility provisions of ISTEA.

Now, ISTEA is just as much for transportation as it is for jobs and to help the economy of the various areas. ISTEA significantly increased transportation funding for the States as well as the Territories, and, Commissioner, you've outlined the new programs that this legislation has enabled the Virgin Islands to undertake. Could you give this committee some indication of the effect that this new program has had or is projected to have on the local economy of the United States Virgin Islands in terms of jobs and other measurements of economic growth?

Mr. FRANCIS. Congressman de Lugo, last year we expended approximately \$13.6 million on the ISTEA Program. I would say 80 percent of that is being pumped into the local economy. We have been stressing to the various contractors that they utilize local participation, and I myself am pursuing that very vehemently. If you walk all of the sites of the various projects that we have ongoing now—the Racetrack Road project, the Black Point Hill project, et cetera—you will see local participation.

So there's a large amount of funding that is going into our local economy, as you know, which is dearly, dearly needed, and I don't see any difference in the future, especially with the major projects that are coming up on the Island of St. Croix, which are needed even more so than the Island of St. Thomas. We figure that with the Christiansted bypass project, with the Frederiksted pier, the intermodal terminal that we are developing in the Frederiksted area, the possibility of also developing the park along the shoreline of Strand Street in Frederiksted, also developing a park along the shoreline in Calas Bay, we can see that this program is going to be very instrumental in really turning around the economy in the Territory.

Mr. DE LUGO. Commissioner, you've indicated that in order to transfer highway funds for the purchase of buses on St. Croix, you learned that you first had to make an application to the Federal Transit Administration under its section 18 program for rural areas. Only then could Federal money be transferred to the Federal Transit Administration. Fortunately, the Federal Transit Administration in Region 2 guided you through this. Do you, therefore, recommend that we amend ISTEA to either spell out this project or perhaps eliminate this step altogether?

Mr. FRANCIS. Which step, Congressman?

Mr. DE LUGO. Well, the step of the application that you had to make under section 18.

Mr. FRANCIS. No, I don't think you have to eliminate the step. In fact, the step was a blessing in disguise to us, because we did not know if we had to apply as a section 3 grant or how we had to apply. The section 18 grant application is not as detailed as a

section 3, and it is basically that you describe the programs, you identify the cost, and you give some justification. So it was an easier mechanism in getting a grant submitted, and it doesn't have the scrutiny of the section 3, which we have been trying to pursue acquiring our buses for St. Croix for the last three years.

So I think the section 18 grant application is a mechanism that you can use and is a very simple and easy process. That went very smoothly, and we were very happy to hear that we could use that grant application.

Mr. DE LUGO. Therefore, that is a mechanism that other rural areas can use for the same purpose.

Mr. FRANCIS. Yes. That was a big plus to us.

Mr. DE LUGO. Thank you.

Mr. FRANCIS. Because, again, we do have a little staff, and to have then repackaged all of these grant applications and packaged them like a section 3 just could not have been done in the timely manner that we wanted it to be submitted and approved.

Mr. DE LUGO. Thank you.

Mr. Chairman, while we had that 15-minute break while the Members were going to vote on the floor, the Commissioner was showing to the members of the staff some of the projects that are planned, and it's an amazing thing what they can do with computers these days. For instance, this is a picture in St. Croix as it is today, and this is the Christiansted bypass, and if you look at this, the highway is there, but in reality it isn't. This is the computer placing the highway in there and showing you exactly what you're going to build and how it's going to work.

You know, it's always a very controversial thing when you're going to build a project and change configuration and come into a community, change traffic patterns, and have to move existing houses. But by holding public meetings and the Commissioner being able to show people that live in the area these projections, people could see what was going to happen, and those who were opposed to the project initially came around to support the project.

Also, he showed some pictures. These are the pictures of the waterfront in St. Thomas. The top ones are the waterfront as it is now. Let me pass them down here to you. The bottom pictures are pictures of the widening of the waterfront, the planting of mature palm trees, the bus turnouts, and they're all shown there by the computer as they will be built. They don't exist yet, but those are the plans that the Commissioner and the Governor have, and that's what's going to happen.

The same thing on St. Croix, where they're going to build this beautiful park along the waterfront in Frederiksted, which is the town that you and I visited when we were down there in December that needs this kind of economic help so desperately.

So I just want to say for the record, Mr. Chairman, that it's been a pleasure to work with Commissioner Francis, because as ISTE was being put together, I was in touch with him, and I said, "Commissioner, you can't wait to start your plans after we pass the legislation. This is a tremendous program that this Congress is going to pass, and you have to be ready to spend the money." He assured me he was, but I didn't quite believe him. I've got to tell you the truth. [Laughter.]

Mr. DE LUGO. But he did it, and he's put together a tremendous team, and he's really using ISTEA to help our community. I want to thank the committee, and I want to thank you, Commissioner, for doing that, and I wish all of my commissioners in the Virgin Islands would do the same thing. It would make life easier.

Mr. FRANCIS. It's nice to hear that, Congressman.

Mr. DE LUGO. Thank you.

Mr. RAHALL. Thank you, Mr. de Lugo.

Mr. Commissioner, I have just a couple of questions. Since you're rather unique not only in your climate and tourism, but also in transportation decisions because of the fact that in the Virgin Islands a dual responsibility for both highways and transit lies with the same agency, what are some of the major factors that are considered in developing your transportation improvement program?

Mr. FRANCIS. Well, I'm happy to say during my tenure as Commissioner of Public Works, before the ISTEA Program, we were able to get the Federal Highway Administration and also UMTA at the time—FTA now—to do some studies for us, and based on those studies that, in fact, Congressman de Lugo was very instrumental in getting for us back in the early and mid-1980s, we were able to identify some of the needs. We also have in-house two planning committees, one in highways and one in transit, and they meet on a regular basis, and I chair both of them. As a result, again, having these dual roles and keeping in line in the support of our great Governor Farrelly's MPO programs for public works, we then make these decisions.

We're kind of unique, too, in that we've never had funding in the past to really upgrade our highways or meet our transit needs as we do now, so we've always had plans and plans and plans, and now we can now implement these plans. The priorities we'll set just by the daily needs. The problems that we have—traffic congestion in Charlotte Amalie, problems in having to go through Christiansted in St. Croix, problems with our Red Hook dock in Cruz Bay—we're just at the ground floor of our evolution in our highway and transit program, so the needs are very easily spelled out right now. We don't have the problem like the other States where you've been in the system for a long time and you have all these needs now and you're trying to refine these needs. We just have some basic needs that we're trying to address at this moment.

Mr. RAHALL. Well, as you know, ISTEA grants a great deal of flexibility to State and local governments as far as transfer ability between highways and transit programs. What percentage of the Federal transportation funds apportioned to the Virgin Islands have been transferred among these categories?

Mr. FRANCIS. It's less than 50 percent. We were told that it has to be no more than 50 percent, so we're making sure that we stay in that ball park.

Mr. RAHALL. Very good. Thank you, Mr. Commissioner.

Mr. FRANCIS. Thank you.

Mr. RAHALL. Anything else, Ron?

Mr. DE LUGO. No. I'd just like to close, Mr. Chairman, by saying very seriously that I hope that you'll be able to take the committee down to the Virgin Islands sometime this year, because it will give the committee an opportunity to see how ISTEA works in the U.S.

Territories. I think it's a success story. I think we've got many, many things to show you—surface transportation, docks, airports, bus transportation, park-n-ride, congestion that we're trying to correct—and I think it would be a very good trip for the committee. I know it would be a pleasure for us to host you there.

Mr. RAHALL. I appreciate the invitation. Of course, that has to be in consultation with our full committee chairman, and in consultation with budget priorities as well.

Thank you, Mr. Commissioner.

Mr. FRANCIS. Thank you.

Mr. RAHALL. Our next witness is Mr. Lester P. Lamm, President, Highways Users Federation for Mobility and Safety.

Mr. Lamm, welcome to the subcommittee. You may proceed as you desire.

TESTIMONY OF LESTER P. LAMM, PRESIDENT, HIGHWAY USERS FEDERATION FOR MOBILITY AND SAFETY

Mr. LAMM. Good afternoon, Mr. Chairman. I've submitted testimony for the record, and in view of the lateness of the hour, let me pick and choose a few things from that and amplify perhaps some of the things I've heard stated by your earlier witnesses this morning as well. Thank you for your courtesies.

As many of the staff know, I've been appearing before the subcommittee for the better part of 25 years, probably on an average of once per year, always very interested in the oversight role that this committee exercises. I think the timeliness of your exercising this oversight on progress in implementing the ISTEA legislation, and particularly your desire to emphasize the National Highway System, ties right into our own members' priorities.

I would just state, too, that I'm the first representative of the private sector that you've heard from today. You will have others on the program tomorrow, but I think you'll find that with regard to the reaction to the National Highway System and in many of the other priorities from the ISTEA legislation, you won't find a very different position between the public and private sectors of the economy. In fact, my own members have indicated to me that they want us to consider the top priority in the ISTEA legislation to be approval of a timely and a good National Highway System and continued funding at a level sufficient to carry out improvements in that system.

Why is that so? As you know, it's only somewhere between 135,000 and 175,000 miles when it will eventually be approved. That represents 4 percent of the total road and street mileage in the United States; however, it's estimated that the National Highway System will carry 40 percent of all highway travel and about 75 percent of the heavy truck traffic. My own members are generally the people who are shipping and carrying goods over the highway system, and when they see something that says "75 percent of commercial vehicle traffic will take place here," they need to be highly concerned about it. In fact, they feel that the main purpose for the Federal Government to be involved in surface transportation, particularly highways, is because the highway system productivity is so basic to the bottom line of American producers and suppliers.

There has been some discussion in recent years about what highway transportation productivity is right now. Our best figures are that we're running somewhere between 2 and 3 percent per year productivity increases, and we've recommended that this be one of the first items that the new Data Office in the Department of Transportation take a better look at. I think we really need to worry about our own manufacturers being competitive in an increasingly complex 21st century world economy.

Highway Users Federation has looked at a number of maps that have already been submitted to Federal Highway by some of the States, and we expect that the National Highway System will consist primarily around the country of highways that exist today and that carry today the basic farm products to market, commuters to work, tourists to new experiences, raw materials to factories, finished goods to rail heads, ports, other intermodal facilities, and their marketplace. We expect the National Highway System funds will provide welcome safety and service improvements to most or many of these facilities. In addition, I think it's obvious there will be some new construction to serve developing corridors of international trade, and when this happens we need to remember that the basic Interstate Highway System map was laid out in the 1940s and doesn't necessarily reflect all of today's economic activities.

I guess our best estimate of the 26 States we've looked at is that perhaps as many as 12 of those 26 expect to be late in meeting the Federal Highway deadline of submitting a basic map to the local Federal Highway office by the end of this month. In fact, looking back, 11 of the 26 did not make the March 31 deadline to provide a functional classification study to Federal Highway. If you extend that into the future, you might worry a little bit at this stage that Federal Highway will meet its own deadline. I don't think they'll have problems making it, but I think it's going to be a very busy summer as they pull together the final State submissions and make sure that they have a good match at State lines and so forth.

I think it's also evident from some of the things that we've seen from the early stages that many of the States we've looked at want a more extensive system within the State than Federal Highway's early planning guidance from June of last year allows, with few exceptions.

Looking to funding, Congress has reserved \$38 billion over the six years of ISTEA for construction and maintenance or upgrading on the National Highway System. Although the States are given considerable discretion to transfer National Highway System funds to other transportation projects, that \$38 billion represents a quarter of all of the highway and transit funds that were authorized in the ISTEA. But, again, if you feel that those will be concentrated on the National Highway System, those funds are going to enable the States, first of all, to improve highway transportation productivity, but then also to incorporate the most recent technologies for smart highways.

I would like to see the National Highway System be a showplace for what IVHS can really do for improving traffic safety and efficiency both in urban and regional areas. I think the funds will also build additional lanes where they're needed in many places. They'll

permit the States to use good traffic management as we approach and come into urban areas, to increase throughput capacity without necessarily adding additional lanes in some urban areas, and even with these limited financial resources, I think focusing them on this small 4 percent system makes excellent public policy sense.

Since we do expect the National Highway System to carry the bulk of commercial and personal highway travel, this investment is going to be magnified. For instance, if you want to compare again the competition that our producers and suppliers have in a world market in the 21st century, let's say the typical factory is located perhaps 1,500 miles between the production site to some kind of intermodal facility if this production site is going to produce products for overseas delivery. By comparison, in most of the European countries, a producer has roughly a 300-mile trip from a factory or a production site to a port, and in Japan, of course, the distance is even less than that. So with this, looking at these figures, it's not difficult to understand why our members in transportation and manufacturers in general look very closely at surface transportation productivity when they think about maintaining this competitive edge into the future.

I just might mention briefly, too, that this Congress may also consider legislation related to the North American Free Trade Agreement, and when you look at that and compare that to the Interstate Highway System, you note that only 16 transborder crossings to Mexico and to Canada today are interstate-type facilities. That means we have roughly one high-capacity crossing at roughly every 300 miles of border. If we really anticipate the NAFTA agreement to increase traffic across the border by up to 50 percent in the next couple of decades, as some people have estimated, then I don't think this current one high-capacity crossing for every 300 miles will be sufficient, and I think the National Highway System should help provide additional capacity, additional throughput. It may be, for instance, that we may have to have some kind of the equivalent of high-capacity service every 150 miles.

I would mention that doesn't mean you have to have brand-new facilities at the crossings. A lot of this efficiency improvement can be handled by productivity advances by the inspection organizations of our Government and the other governments.

It looks to us as if there will be some debate when the National Highway System comes to Congress. You're likely to begin the debate next year, and certainly we hope that the deadline of September 30, 1995, for eventual passage will be met with ease. However, it's likely to anticipate that there will be people who don't feel as strongly pro National Highway System as we and our members do. Also, you're going to see an opportunity for the National Highway System to bring in debate on other very complex issues, like apportionment formulas, revised funding levels for individual program categories, how to treat specific development projects, and other issues, and I worry about any of these having the potential to delay enactment of the National Highway System through the delay in the entire surface transportation legislation. Looking back, Congress has not been able to meet the deadline in several of the last

recent legislative initiatives in order to prevent a funding gap of some kind while the final obstacles are overcome.

Obviously, as Congress looked at the development of the National Highway System legislation, the fact that the ISTEA legislation has a provision that requires the DOT Secretary to withhold NHS and interstate funds if the approval deadline is not met becomes a real concern for us, and some of the groups that I've heard from around the country are likely to see this provision as an opportunity rather than a concern. That, to me, indicates a real problem, and, again, we would hope to be able to work very closely with this committee and with your counterpart committee in the Senate to make sure that the final approval doesn't really approach the mandated deadline.

One of the things that we've done—I believe you have copies of this, Mr. Chairman—is just last week we produced a brochure in, I would say, layman-type language explaining to people what the National Highway System is. The concept is new, but, on the other hand, when the interstate system concept was new, there was a highly visible flurry of publicity about the interstate system. Every newspaper in the country was covering the fact that Congress was beginning to focus on a brand-new system of long distance highways. We don't have this happening at the time we're looking at the National Highway System, so we see a need to try and work a little bit of additional opportunity to publicize what happens with the National Highway System.

There are other issues that we're worried about and working on in the ISTEA legislation, and my testimony covers a few of them. Let me just mention that one of the things we're doing is to help create a more prominent voice for private sector local transportation leaders in the metropolitan planning organization halls, and I was very much interested in the testimony of Mr. Kochanowski, because his blue ribbon group that he's established in Pittsburgh is the same kind of joint public-private activity which we'd like to see happen everywhere.

We've begun a series of metropolitan planning organization workshops. We held the first one last Friday in Los Angeles in cooperation with the National Association of Regional Councils, with AASHTO, with Federal Highway Administration, and with other private sector organizations involved in the Coalition for Safe and Efficient Transportation. I think this was a very highly successful workshop, bringing people who need to have transportation service into the same room with the people who manage the transportation facilities for the first time.

I just want to touch very briefly on funding. A number of your earlier witnesses have talked about it. We, too, feel very strongly that the \$2.97 billion for highways that are one element of the Clinton program for short-term economic support should be approved. We don't have a position on many of the other items in this program, but certainly we hope that the \$2.97 billion will be approved by Congress in time to have some influence this construction season. I would remind you, Mr. Chairman, that many of the northern-tier States don't have much time left before the opportunity to have any benefit in the 1993 construction season has passed.

Looking ahead, we also have praised President Clinton's decision to recommend full funding for the Highway Program in his 1994 budget, and we have also supported the context that the 2.5-cents-per-gallon fuel tax which was devoted to deficit reduction in 1990 be restored to the Highway Trust Fund, and we would highly support that as well.

Finally, I think we would agree with most of your public sector representatives this morning that the Clean Air Amendments Act of 1990 is causing considerable problems. I think it's necessary for Congress to work out a way in which we can have transportation improvements within the context of improving the air quality situation. To me, that requires a balanced legislative treatment and balanced administration of both entities, both the Department of Transportation and the Environmental Protection Agency. As we look around the country right now, we don't really see that that balance exists, and we would like to work more closely with others, including the congressional committees, as the mandated deadline approaches. To me, it would be highly ironic if we have a great National Highway System, we have all of the funds that were authorized in the ISTEA ready to be used, and then a requirement for clean air, which may be administered, to some fashion, in an arbitrary manner, prevents these funds from being used for the improvements that are really needed.

Thanks again for the opportunity to appear before you this morning, Mr. Chairman. I'd be glad to answer any questions or work with the committee further.

Mr. RAHALL. Thank you very much, Mr. Lamm, for your testimony. We appreciate in particular your emphasis on the National Highway System, your stressing the importance of this system to moving goods and people in this country, as well as your alertness to the fact that the Federal Highway Administration may be delayed in submitting their final proposal to us by the end of this year as required under ISTEA. We will have the Federal Highway Administration testifying tomorrow, and that certainly will be a question that I will pose to them.

Mr. LAMM. I'm aware of that, Mr. Chairman, and I don't know if I'd go so far as to say they're going to slip the deadline, but I'm just saying that we already see 12 out of the first 26 States that we've contacted late in providing their own maps and system description to Federal Highway Administration by the end of this month, and that gives us some reason for concern.

Mr. RAHALL. I understand that. I did not mean to question the Federal Highway Administration's schedule, but rather the information they're receiving in that time table.

In your view, would the inclusion of all the miles that have been suggested for the National Highway System, the maximum number of miles, would that provide a sufficient level of capacity to meet all of the demands that will be placed upon the system?

Mr. LAMM. That, I think, is a question that you may find people answering in a different way. Again, of the first 26 States whose systems we've looked at, by far the largest share of those States are requesting more than the mileage which was authorized as a target by Federal Highway in June of last year. If that holds across the entire country, then you may find the individual State submis-

sions approaching the top limit, which is around 175,000 miles if you add in the percentage which is permitted optionally over the 4 percent.

From my point of view, there's a great possibility that would happen, because the Federal aid primary system, which the National Highway System is really designed to replace, now has roughly 310,000 miles of road on that system, and if you even figure that we'll end up with a top limit close to 175,000 miles for the National Highway System, that says there's roughly 135,000 miles—and maybe they're now U.S. numbered highways—now carrying Federal aid primary designation that are going to be removed from that system. They may provide the only service into large segments of a State or entire blocks of counties and so forth, and I worry that there will be a lot of concern for roads being dropped off the system.

I would hate to see the entire National Highway System not be able to be approved because of pressure to add on additional routes, but everything I've seen to date says that that is a possibility, not a probability.

Mr. RAHALL. I thought it was particularly interesting you mentioned that only 16 interstates serve Canadian and Mexican cross-borders. From what you've seen in the National Highway System, are there enough proposed mileage along those borders to be able to serve all the good things we hear are going to happen under NAFTA?

Mr. LAMM. As I'm reflecting, the 26 States we've heard from include roughly eight border States, and there are, again, working from memory, maybe four or five additional crossings which they would intend to put on the National Highway System. If you expand that around the whole country, then you may have perhaps another 10 or so that might eventually come in. But, again, I would make the point that by far the sticking area right now is the ability to move particularly commercial vehicles through today's border crossings due to the inspection processes required by Customs and Immigration and so forth, and I think the opportunity to improve the efficiency of that kind of flow gives even more potential benefits than new border crossings might in helping the efficiency of NAFTA.

Mr. RAHALL. According to the recently published report by GAO entitled "Strategies for Safeguarding Highway Financing," to which you referred in your testimony, full funding of ISTEA may result in triggering the Byrd amendment that requires a reduction in the apportionment of authorized amounts. In addition to the strategies proposed in the GAO report, in a worst-case situation, would the Highway Users Federation support increasing Federal excise taxes on motor fuels to support full funding of ISTEA?

Mr. LAMM. Let me work you through a hierarchy. First of all, we fully support the full funding for every year of the ISTEA authorization period. If you can do that in today's tax revenue with today's tax levels, that would be great. I think most people feel you can't. If you could do that as a second step by redirecting the 2.5 cents that was put into deficit reduction in 1990 into the Highway Trust Fund, all of our members would support that. If even that is not sufficient and then you have to start asking people about

new highway user fees, we would take that up as an issue when it becomes a very viable point. We don't have a position that would support that at this stage. Neither do we oppose it. It just hasn't been necessary up until this point. The GAO report does say that if the 2.5 cents is redirected, that would forego the application of the Byrd amendment.

I might point out one other thing, though. The Treasury Department estimates of revenues keep fluctuating wildly, and I'm not exactly clear why that's true. I look around the statistics I see, and, for instance, the last Federal Highway Administration report on motor fuel usage says usage was up by the end of December 2.5 or 2.6 percent higher than the previous year. I look at the heavy vehicle use tax, and I see more commercial vehicles on the road, so those collections ought to be going up. I look at the excise tax on new trucks and new truck parts, and I see the commercial manufacturers and dealers of trucks having their best year in 28 years. So I would ask myself whether we're really certain that the Treasury Department estimates that say we're going to fall this far short to require the Byrd amendment to be applied won't change themselves if the economy begins to improve.

Mr. RAHALL. Well, certainly we would hope those first two situations that you describe would come about, but my question, of course, was, in the worst-case scenario, would you support those increases in excise taxes?

Mr. LAMM. In that case, Mr. Chairman, we'll come back and testify again.

Mr. RAHALL. Well, we will be back to you, too. Let me say also probably one of the big factors that causes this fluctuation or uncertainty in the Highway Trust Fund is what effect the proposed BTU tax are going to have, and we've asked them to run numbers, and nobody's run any numbers yet on it, perhaps because that's not quite a solid target or stationary target at this point, but rather one that moves, and we're not sure what exemptions may be made tomorrow or the next day, et cetera. So perhaps as we get more in mind what's going to happen on the BTU tax, we'll be able to see more accurate predictions.

Mr. LAMM. I agree, Mr. Chairman, that may be an influence. Our petroleum members estimated when the package first came to the Hill that the implications on motor fuel taxes might be the equivalent of a 10-cent-per-gallon increase. However, as you point out, with the exemptions that are being discussed and, in some cases, agreed to in concept, that either would reduce the entire revenue, thereby reducing the total impact on deficit reduction, or else a heavier portion of the burden would fall on the remaining taxes, including highway user taxes. If that happens, then you may have the economic slowdown impacts of a large-scale increase in fuel prices.

Mr. RAHALL. Thank you very much, Mr. Lamm.

Mr. LAMM. Yes, sir, Mr. Chairman.

Mr. RAHALL. That concludes this first day of hearings of this subcommittee. One housekeeping announcement in regard to tomorrow's hearing. It will be held in room 2247 instead of room 2253. I believe this is a larger room that will accommodate us better. Thank you.

The subcommittee stands in recess.

[Whereupon, at 1:13 p.m., the subcommittee recessed, to reconvene at 10:00 a.m. on Wednesday, April 21, 1993.]

PREPARED STATEMENTS SUBMITTED

BY WITNESSES

STATEMENT OF MAYOR KENNETH S. BROUN, CHAIR, TRANSPORTATION
ADVISORY COMMITTEE FOR THE DURHAM-CHAPEL HILL-CARRBORO, NORTH
CAROLINA URBAN AREA

I appreciate the opportunity to submit comments to you as Chair of the Transportation Advisory Committee for the Durham-Chapel Hill-Carrboro Urban Area. Chapel Hill and Durham are the home of the University of North Carolina and Duke University. You may have heard of our basketball teams.

Our Transportation Advisory Committee is composed of local elected officials serving as the Metropolitan Planning Organization for our urban area, which has a population of more than 205,000. My purpose in these comments is to make two fundamental points:

1. Strong support for local flexibility to meet transportation needs.

Many local elected officials in our urban area enthusiastically support the local flexibility provisions in the 1991 Intermodal Surface Transportation Efficiency Act. We recognize that this legislation represents a significant, even historic, shift toward increased local flexibility and accountability for meeting local transportation needs. We applaud the Congress for incorporating this change in the new legislation.

As an example, these local flexibility provisions have enabled us to include a 16-foot-wide raised median suitable for future landscaping, 5-foot-wide bikeway lanes and sidewalks in widening North Carolina Highway 86 from two to four lanes in the northern part of Chapel Hill. We are working to carry out long-range plans to enhance the NC 86 corridor as a major entrance to our community and the University campus.

Without local flexibility in using part of the Surface Transportation Program funds, this highway project might have been five lanes of barren asphalt and concrete in a suburban residential setting. With the features added at a limited cost, this project can enhance rather than detract from the surrounding residential neighborhoods.

Mayor Kenneth S. Broun
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2. Need for strong Congressional support of implementing the Intermodal Surface Transportation Efficiency Act pursuant to legislative intent.

We have had some difficulty in achieving a new relationship with our State Board of Transportation and Department of Transportation based on the provisions of the Intermodal Surface Transportation Efficiency Act.

We believe the North Carolina Department of Transportation has not fully followed provisions of the new law regarding joint decisions for Transportation Improvement Programs scheduling future projects. In addition, there has been slow acceptance of the provisions allowing us to decide in consultation with the State the use of direct funding allocations under the Surface Transportation Program.

A difficult point in our negotiations with the Department of Transportation was the State's threat to withhold all transportation funding for our urban area because we object to one road project, the widening of the US 15-501 highway south of Chapel Hill.

We subsequently reached a compromise regarding that project, but the underlying issue of following the new legislation is unresolved from our perspective. With new leadership in the North Carolina Department of Transportation this year, we will continue to work to resolve our differences through negotiation.

However, we ask that Congress exercise its oversight responsibilities to ensure that the pending regulations to implement the Intermodal Surface Transportation Efficiency Act will meet your legislative intent. We seek two specific actions:

(a) The State of North Carolina Department of Transportation stated it could not provide the MPO with estimates of future anticipated revenue prior to the development of the State TIP. This lack of financial information has limited the ability of the Durham MPO to develop fiscally constrained TIP's. It has also limited our ability to proceed with project selection as outlined in ISTEA.

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The implementing rules should have a clear requirement that State governments give Metropolitan Planning Organizations best faith estimates of federal funding for use in developing their urban area Transportation Improvement Programs, which identify specific projects, timing and project cost. We believe such a requirement would be consistent with the Intermodal Surface Transportation Efficiency Act.

With firm funding estimates from the State, Metropolitan Planning Organization will be in a stronger position to make firm plans with greater reliability in future scheduling of projects.

(b) In order for project selection to be undertaken by MPO's, they must have the flexibility to allocate funds to those projects of the highest priority to the Urban Area. The ability of the States to arbitrarily remove funds diminishes the process of project selection.

Project selection is a process that Congress specifically granted to large MPO's with the intention of guaranteeing that local transportation needs were met.

State governments should be prohibited from deferring or removing previously planned transportation projects from an urban area because of a disagreement with the Metropolitan Planning Organization's priorities for new projects.

Because of the large amount of State and federal transportation funding allocated by State agencies, they tend to have an advantage in negotiations to reach agreement on transportation plans and project selections. We recognize that Congress cannot change some aspects of this environment, but we believe it would be important for Congress to reaffirm the principles of the Intermodal Surface Transportation Efficiency Act and support the prohibition suggested above.

We believe such a position would help deal with the potential problem exemplified in the threat that we would lose all transportation funding because of a disagreement about one project.

Finally, I want to emphasize the strong feelings of many local elected officials in our urban area about the need for balanced transportation plans that include and promote public transit, ridesharing, bikeways and walkways as well as necessary highway projects.

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Public transit, bikeways and walkways are important to us as key strategies to address traffic congestion, highway safety, energy conservation and air quality issues as a nation and in metropolitan areas such as the Research Triangle area of North Carolina. As we steadily increase our local support in these areas, we very much need the support and intergovernmental collaboration envisioned in the 1991 Intermodal Surface Transportation Efficiency Act.

Thank you again for the opportunity to submit these comments.

Kenneth S. Broun
Mayor of Chapel Hill and Chair, Transportation Advisory Committee
for the Durham-Chapel Hill-Carrboro Urban Area

Submitted April 20, 1993

SUPPLEMENTARY TESTIMONY OF MAYOR KENNETH S. BROWN, CHAIR, DURHAM-CHAPEL HILL-CARRBORO URBAN AREA TRANSPORTATION ADVISORY COMMITTEE

I would like to submit the following comments related to my testimony to the Public Works Subcommittee concerning the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. These comments provide supplementary detail to my previous comments.

1) The State of North Carolina Department of Transportation has required that the Durham-Chapel Hill-Carborro Urban Area allocate four years worth of Surface Transportation Program Direct Allocation funds towards projects that had already appeared in the State Transportation Improvement Program. The State had allocated funds to pay for these projects in their previous TIP. The State has informed the MPO that if the Direct Allocation funds are not used for these projects there are no other funds available to supplement the loss of funding and the projects would be delayed or cancelled.

2) The State has developed a schedule for approving the State TIP that indicates they will approve a State TIP before there is final approval of the Urban Area TIP, even though the proposed federal regulations are very clear that the approval of the Urban Area TIP should precede the development of the State TIP. The State claims that the Federal Highway Administration has approved this State process and at a recent meeting between representatives from the State DOT, Durham MPO and Federal Highway Administration the federal representative went so far as to suggest that project selection was a meaningless concept under the State process for TIP development. We do not believe this process is consistent with Congressional intent regarding project selection. We would ask that Congress reaffirm their intention that TMA's should play the primary role in project selection and ensure that State TIP processes' do not dilute TMA's responsibilities.

THE UNITED STATES VIRGIN ISLANDS

DEPARTMENT of PUBLIC WORKS

UNITED STATES HOUSE of REPRESENTATIVES

SURFACE TRANSPORTATION SUBCOMMITTEE

TESTIMONY

APRIL 20, 1993

LEO H. FRANCIS

COMMISSIONER

GOOD MORNING, CONGRESSMAN RAHALL, CHAIRPERSON OF THE U.S. HOUSE OF REPRESENTATIVES SURFACE TRANSPORTATION SUBCOMMITTEE AND DISTINGUISHED MEMBERS OF THE SUB-COMMITTEE.

I AM LEO FRANCIS, COMMISSIONER OF THE DEPARTMENT OF PUBLIC WORKS FOR THE VIRGIN ISLANDS, A U.S. TERRITORY IN THE CARIBBEAN. THANK YOU FOR AFFORDING ME THE OPPORTUNITY TO APPEAR BEFORE YOU TO TESTIFY ON THE IMPACT THAT THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991, BETTER KNOWN AS ISTEA, HAS HAD ON THE VIRGIN ISLANDS. BEFORE PROCEEDING FURTHER, I WISH TO COMMEND CONGRESSMAN RON DE LUGO, DELEGATE TO CONGRESS FROM THE U.S. VIRGIN ISLANDS, FOR HIS DILIGENT AND PERSISTENT EFFORTS ON BEHALF OF THE PEOPLE OF THE TERRITORY. HIS VIGILANCE AND ATTENTION TO THE NEEDS OF VIRGIN ISLANDERS HAVE RESULTED IN FAR REACHING BENEFITS FOR THE TERRITORY, AND ONE GOOD EXAMPLE IS THE ISTEA PROGRAM. ORIGINALLY, THE EXTENT OF THE ROLE THIS TERRITORY COULD PLAY IN THE ISTEA PROGRAM WAS UNCLEAR; HOWEVER, DUE TO CONGRESSMAN DE LUGO'S EFFORTS IN OBTAINING CLARIFICATION OF THE LEGISLATION, ISTEA IS A SUCCESS STORY FOR US.

FIRST OF ALL, HOW WE ARE ORGANIZED HAS A LOT TO DO WITH THIS SUCCESS. THE VIRGIN ISLANDS IS AN UNINCORPORATED TERRITORY WHICH AFFORDS US SEVERAL ADVANTAGES IN PURSUING ISTEAFUNDING. THE GOVERNMENT IS SIMULTANEOUSLY BOTH STATE AND LOCAL; THEREFORE, THERE ARE NO LAYERS OF BUREAUCRACY TO TRAVERSE TO ACQUIRE APPROVALS FOR TRANSFER OF FUNDING FROM ONE AGENCY'S JURISDICTION TO ANOTHER NOR IS TRANSFER OF TYPES OF FUNDING INHIBITED. THEN, AS HEAD OF AN AGENCY WHICH HAS DUAL RESPONSIBILITY FOR BOTH HIGHWAYS AND MASS TRANSPORTATION, I AM ABLE TO EASILY UTILIZE THE FLEXIBILITY CONCEPT OF THE ISTEAFUNDING LEGISLATION BY MAKING DECISIONS AS TO WHICH TRANSFERS WOULD BEST BENEFIT BOTH HIGHWAYS AND MASS TRANSPORTATION WITHOUT ANY JOSTLING FOR POSITION.

SECONDLY, HOW WE ARE USING THE MONEY MADE AVAILABLE THROUGH ISTEAFUNDING WILL BE OF INTEREST TO YOU. WE TRANSFERRED \$5.1 MILLION DOLLARS FROM FHWA TO FTA TO SUPPORT OUR TRANSIT PROGRAM. INITIALLY THE APPLICATION TO FTA INCLUDED \$3.5 MILLION FOR ROLLING STOCK TO ESTABLISH MASS TRANSPORTATION ON ST. CROIX, \$.5 MILLION FOR UPGRADING THE BUS TERMINAL ON ST. THOMAS, \$.1 MILLION FOR DESIGN OF TERMINALS ON ST. CROIX, AND \$1 MILLION FOR EXPANSION OF THE FERRY TERMINAL ON ST. JOHN. OUR APPLICATION WAS FURTHER

AMENDED TO INCLUDE CAPITAL ASSETS FOR EXPANDED TRANSIT SERVICES, INCLUDING DEVELOPMENT OF A PARKING MANAGEMENT PROGRAM AS THE CENTERPIECE OF OUR TRANSPORTATION SYSTEMS MANAGEMENT (TSM) STRATEGY.

UNDER THE 1991 ISTEA LEGISLATION, THE U.S. VIRGIN ISLANDS WAS AWARDED \$87.5 MILLION OVER A SIX YEAR PERIOD 1992 TO 1997.

THE FOLLOWING IS A BREAKDOWN OF ISTEA OBLIGATIONAL LIMITATION AND AUTHORIZATIONS TO DATE:

1992 - OBLIGATIONAL LIMITATION \$11.8 MILLION

- AUTHORIZED FOR EXPENDITURE \$11.8 MILLION

SINCE WE HAD MORE PROJECTS THAN FUNDING ALLOWED, WE WERE GRANTED \$1.6 MILLION ADDITIONAL FUNDING IN 1992.

1993 - OBLIGATIONAL LIMITATION \$10.9 MILLION

- AUTHORIZED FOR EXPENDITURE \$9 MILLION INCLUDING \$5.1 MILLION IN TRANSIT-RELATED PROJECTS.

AT THIS TIME WE ANTICIPATE THAT WE WILL BE ABLE TO EXCEED OBLIGATIONAL LIMITATION BY \$6 MILLION. AS A RESULT, WE CAN EASILY ACCOMMODATE THE ADDITIONAL \$2 MILLION THAT THE STIMULUS PACKAGE

WILL PROVIDE. WHILE IT IS OUR UNDERSTANDING THAT THE \$2 MILLION AUTHORIZATION HAS BEEN GRANTED, THE APPROPRIATE DOCUMENTATION TO AUTHORIZE EXPENDITURE OF THE FUNDS HAS NOT BEEN RECEIVED TO DATE. FOR YOUR EDIFICATION, I AM LISTING FOR YOU NOW THE TRANSIT-RELATED PROJECTS INCLUDED IN THE \$5.1 MILLION TRANSFERRED FROM FHWA TO FTA:

ST. THOMAS

- * RENOVATIONS ON PHASE TWO OF THE BUS MAINTENANCE FACILITY TO INCLUDE CONSTRUCTING A SECOND FLOOR FOR ADMINISTRATIVE OFFICES AND MOVING FUEL TANKS TO CREATE AN IMPROVED CIRCULATION AND PARKING PLAN WITHIN THE FACILITY

ST. JOHN

- * RENOVATION OF CRUZ BAY FERRY DOCK TO EXPAND EXISTING PASSENGER DOCK TO ACCOMMODATE THREE ADDITIONAL FERRIES AND CONSTRUCT A PASSENGER TERMINAL.

ST. CROIX

- * PURCHASE OF FIFTEEN 30-FT. HEAVY DUTY ADVANCE DESIGN TRANSIT COACHES AND RELATED EQUIPMENT
- * PERFORM PRELIMINARY ENGINEERING FOR CONSTRUCTION OF A BUS MAINTENANCE FACILITY MID-ISLAND (KINGS HILL AREA)

AFTER FURTHER REVIEW OF OUR PROGRAM, IT WAS EVIDENT THAT IN ORDER TO TAKE ADVANTAGE OF THE QUARTERLY FUNDING CYCLE, WE HAD TO SUBMIT OUR GRANT AMENDMENT BY APRIL 1ST. WE IDENTIFIED ADDITIONAL TASKS WE WANT TO IMPLEMENT THIS FISCAL YEAR, AND THE FOLLOWING PROJECTS HAVE BEEN APPLIED FOR AS OF APRIL 1ST:

ST. THOMAS

- * DESIGN AND CONSTRUCT A PARK-N-RIDE LOT AT UNIVERSITY OF THE VIRGIN ISLANDS PARKING LOT
- * PURCHASE ADDITIONAL RADIOS TO SUPPORT THE PARK-N-RIDE PROGRAM
- * PURCHASE EQUIPMENT TO ESTABLISH A COMPUTER NETWORK HUB AT OUR OFFICE OF TRANSPORTATION
- * PROVIDE ADDITIONAL FUNDING FOR PHASE TWO RENOVATIONS TO ST. THOMAS BUS MAINTENANCE FACILITY

ST. CROIX

- * DESIGN AND CONSTRUCT LA REINE BUS TRANSFER TERMINAL
- * DESIGN AND CONSTRUCT FREDERIKSTED INTERMODAL TERMINAL LOCATED ADJACENT TO NEW PIER FACILITY TO LINK LOCAL RESIDENTS AND CRUISE SHIP PASSENGERS TO VARIOUS MODES OF TRANSPORTATION SUCH AS BUSES, TAXIS, VANS AND TOUR OPERATORS

AT THIS POINT, SOMETHING SAID ABOUT PROCEDURES MIGHT BE HELPFUL TO OTHER JURISDICTIONS. BASED ON OUR EXPERIENCE IN UTILIZING THE ISTEA PROGRAM, THE APPLICATION WAS TREATED AS A SECTION 18 RURAL APPLICATION WHICH HAS BROAD FUNDING CATEGORIES AND IS NON-COMPETITIVE. UNLIKE THE STATES, WE DO NOT HAVE TO REACH OUT TO WORK WITH LOCALITIES TO ENHANCE THE PROGRAM SINCE, AS MENTIONED BEFORE, WE ARE BOTH STATE AND LOCALITY. FOR EXAMPLE, AFTER IN-HOUSE DISCUSSIONS WE REALIZED THAT WE NEEDED AN AMENDMENT TO THE GRANT APPLICATION TO FUND ON-GOING PROJECTS THAT ARE RELEVANT TO THE TRANSIT PROGRAM. WE THEN CONTACTED FTA AND LEARNED THAT WE COULD AMEND THE SECTION 18 APPLICATION QUARTERLY, PROVIDED FHWA FUNDING WAS AVAILABLE TO COVER THE COST OF THE AMENDMENT. OUR FIRST AMENDMENT WAS SUBMITTED TO FTA AND IS NOW BEING REVIEWED, AND WE ANTICIPATE APPROVAL BY THE END OF JUNE.

I NEED TO MENTION ALSO THAT PRIOR TO THE ORIGINAL GRANT APPROVAL OF THE \$3 MILLION TO ACQUIRE ST. CROIX BUSES, WE WANTED TO MOVE FORWARD WITH THE PROCUREMENT EFFORT PRIOR TO GRANT APPROVAL. WE REQUESTED A LETTER OF NO PREJUDICE FROM FTA WHICH WOULD ENABLE US TO PROCEED WITH THE PROCUREMENT DOCUMENTS TO INITIATE PURCHASE OF THE BUSES BEFORE THE GRANT WAS AWARDED. THE LETTER OF NO PREJUDICE WAS PREPARED AND FORWARDED BY FTA BASED ON APPROPRIATE

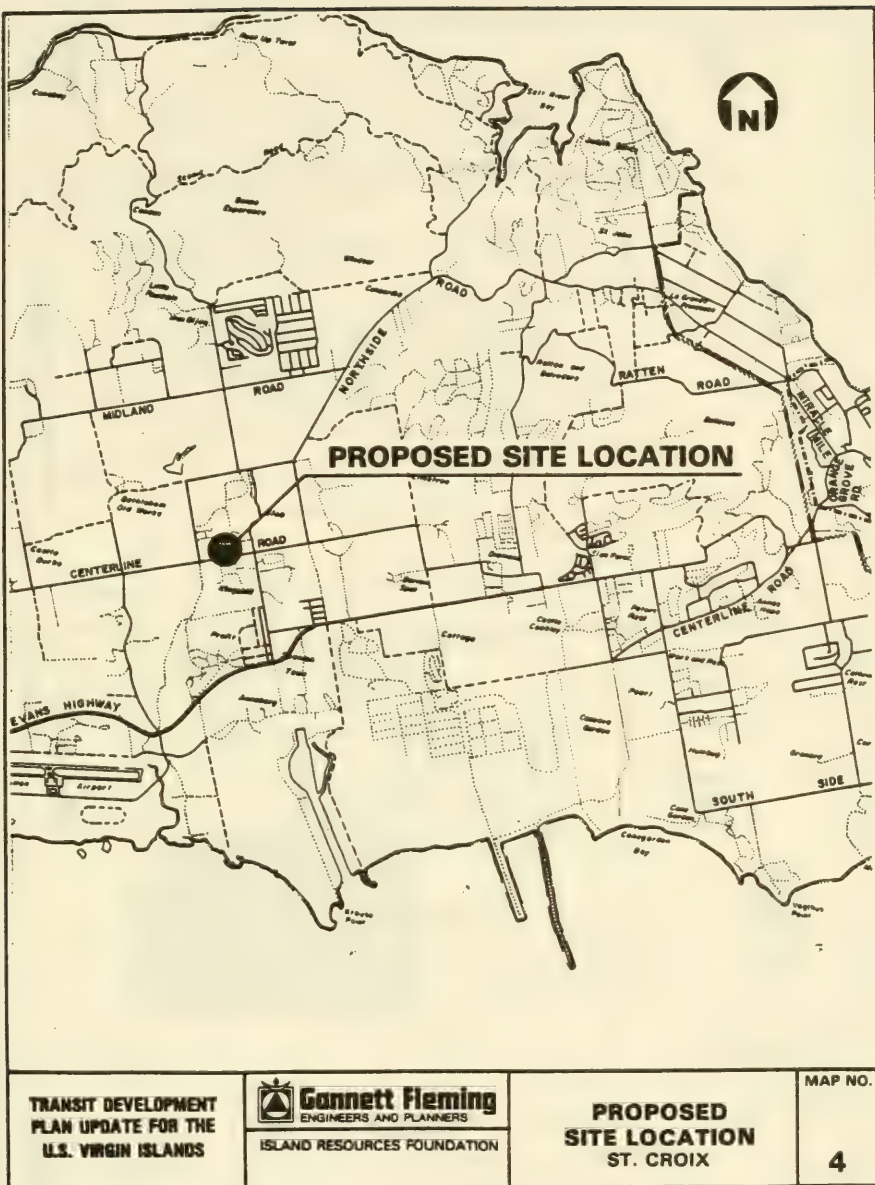
JUSTIFICATION OF THE PROCUREMENT EFFORT WHICH INVOLVED A LONG LEAD TIME. FUNDING HAD TO BE TRANSFERRED FROM FHWA TO FTA SUBSEQUENT TO THE GRANT APPLICATION SUBMITTAL TO FTA. FTA THEN PLACED THE FUNDS TRANSFERRED FROM FHWA INTO THE VIRGIN ISLANDS' SECTION 18 PROGRAM WHICH HAD PREVIOUSLY CONTAINED ONLY FUNDS APPORTIONED BY CONGRESS BASED ON POPULATION. COPIES OF ALL PERTINENT DOCUMENTATION ARE AVAILABLE FOR YOUR REVIEW.

OUR PENDING PLANS CALL FOR SEVERAL PROJECTS TO RECEIVE FINANCING DURING 1993 AND 1994 INCLUDING SCENIC LOOKOUTS, FERRIES, BUSES, AND A VAN POOLING PROGRAM. I HAVE ASSURED CONGRESSMAN DE LUGO THAT WE CAN SPEND OUR ENTIRE ANNUAL APPROPRIATION FROM FHWA TOGETHER WITH THE EXTRA \$2 MILLION AVAILABLE THROUGH THE STIMULUS PACKAGE. WE ARE READY TO GO WITH PROJECTS SUCH AS PHASE ONE OF THE CHRISTIANSTED BY-PASS, SOUTHSORE ROAD REHABILITATION AND CASTLE BURKE/QUEEN MARY SIGNALIZATION ON ST. CROIX, JUST TO NAME A FEW.

I WISH TO TAKE THIS OPPORTUNITY TO PUBLICLY COMMEND LETITIA THOMPSON, DEPUTY ADMINISTRATOR OF FTA'S REGION TWO, AND HER STAFF FOR BENDING OVER BACKWARD TO ACCOMMODATE AND FACILITATE OUR PROJECTS, ESPECIALLY THE CRUZ BAY FERRY TERMINAL PROJECT, AND FOR

BEING SO INSTRUMENTAL IN CONVINCING US, IN VIEW OF THE FIERCE COMPETITION IN WASHINGTON FOR SECTION 3 FUNDS, THAT THE WAY TO GO WAS TO PURSUE THE FLEXIBILITY OF THE ISTEA PROGRAM. AS A RESULT WE HAVE WORKED MORE CLOSELY THAN EVER WITH THE FEDERAL HIGHWAY ADMINISTRATION WHICH PERFORMED IN AN EXPEDIENT AND PROFICIENT MANNER, ENABLING US TO PLACE OUR LONG LEAD ORDER FOR BUSES TO SATISFY OUR COMMITMENT TO THE PEOPLE OF ST. CROIX FOR IMPLEMENTATION OF MASS TRANSIT BY THE END OF THIS CALENDAR YEAR.

AGAIN, THANK YOU FOR INVITING ME TO APPEAR BEFORE YOU, AND I HOPE THAT MY PRESENTATION MAY BE HELPFUL IN ASSESSING IMPLEMENTATION OF THE ISTEA PROGRAM.



**TRANSIT DEVELOPMENT
PLAN UPDATE FOR THE
U.S. VIRGIN ISLANDS**



Gannett Fleming
ENGINEERS AND PLANNERS

ISLAND RESOURCES FOUNDATION

**PROPOSED
SITE LOCATION
ST. CROIX**

MAP NO.

4

FIGURE 12
SITE PLAN
ST. CROIX

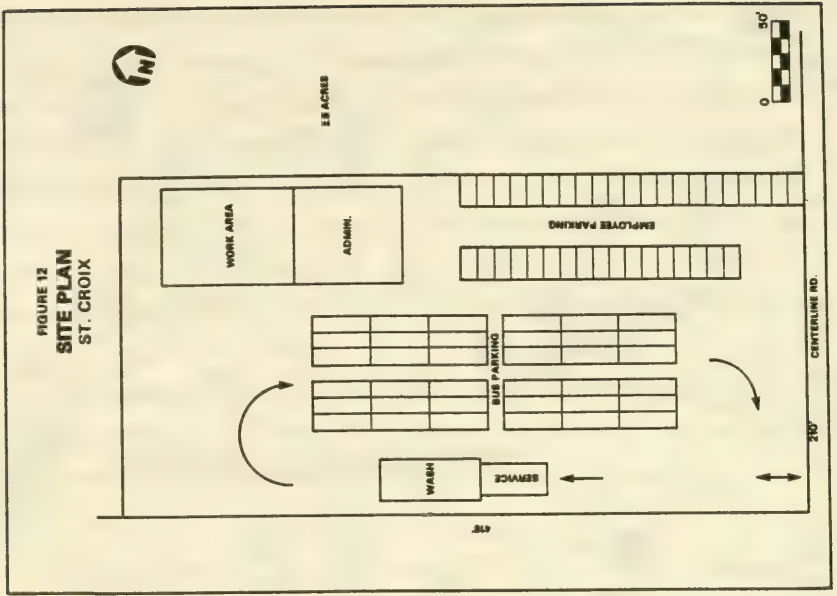
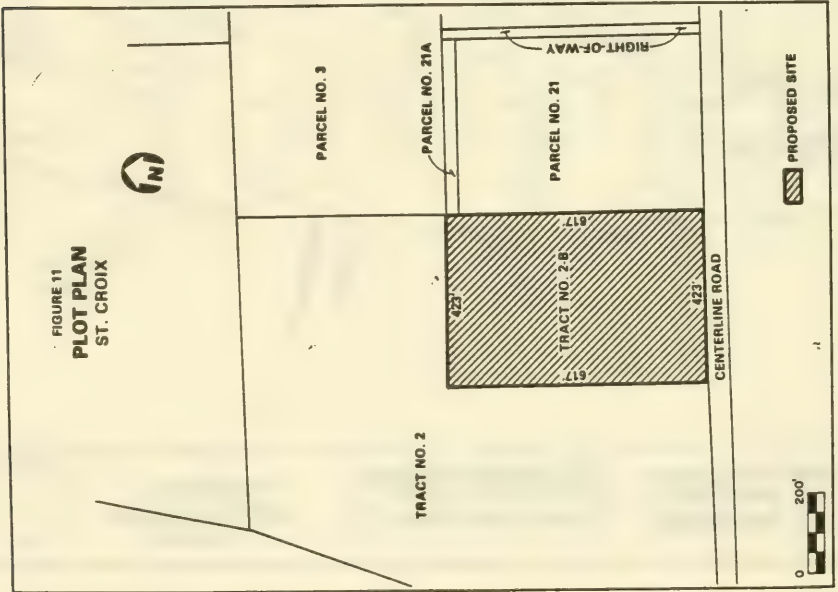
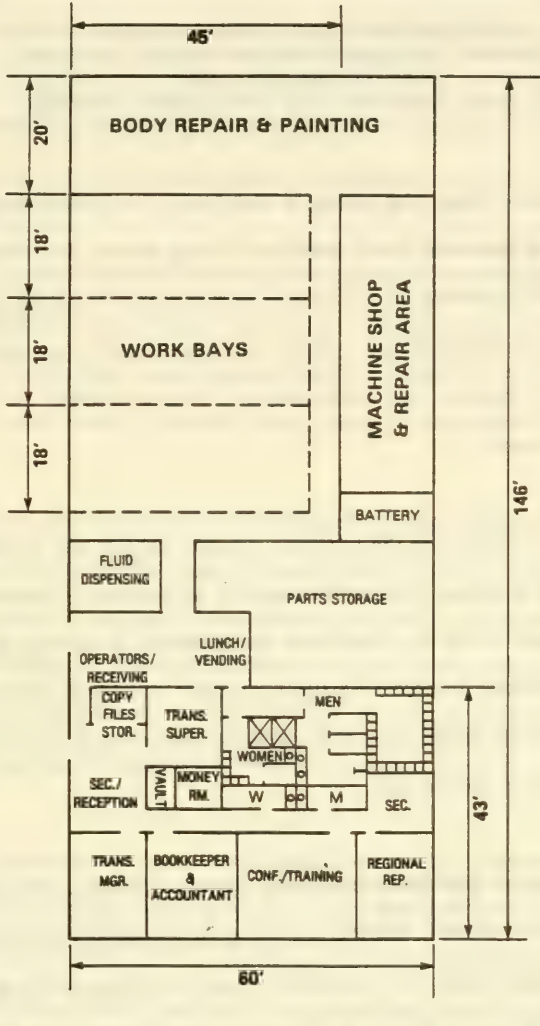


FIGURE 11
PLOT PLAN
ST. CROIX





TRANSIT DEVELOPMENT
PLAN UPDATE FOR THE
U.S. VIRGIN ISLANDS



Gannett Fleming
ENGINEERS AND PLANNERS

ISLAND RESOURCES FOUNDATION

BUILDING LAYOUT
ST. CROIX

FIGURE

13

THE OPPORTUNITY AND CHALLENGE OF ISTEA

By Robert Kochanowski, Executive Director
Southwestern Pennsylvania Regional Planning Commission
For Testimony Before The
U. S. House Public Works and Transportation Committee
April 20, 1993

ISTEA means change and change is never easy. And radical change is even harder. ISTEA has generated some resentment among people who learned the old rules, acquired the capabilities, and built their careers around the earlier system. As some highway building interests see it, all the good work they've done over the years is suddenly being ridiculed as narrow-minded, out of step, and worse. And, of course, that makes them angry.

There is no doubt that the Interstate Highway System was a class act. It promised the most ambitious public works project of all times--and it delivered. It met the goal, first begun under the Eisenhower administration, of connecting the entire continental United States with a first-rate highway system. As a result, we can now drive from coast to coast with relative ease and safety. The problem is, if we live in an urban region, we can't get to work on time.

The America of 1956 was fundamentally different than the country we are living in today. It was a simpler time. National goals were more straightforward, and very few people argued against them. The Interstate Program had strong public support, and Americans loved the freedom that the new highways offered for auto travel and suburban living.

America was also a more rural nation. Most Americans lived in small towns. Only about 60% lived in urban areas. Today, that figure is closer to 75%. Although a number of big city populations have declined during that time, their Metropolitan populations have continued to grow. Today, our urban areas suffer from congestion and air pollution, and other environmental and infrastructure problems.

The same highway program that brought us our Interstate system also produced an unintended effect -- it often distorted the funding of public works. Focusing on building a world-class Interstate system contributed to urban problems in many regions: sprawl, energy waste, air pollution, deteriorating infrastructure, and more.

Over time, a recognition of those growing urban problems helped to cement the coalition which passed the Clean Air Act in 1990, and ISTEA in 1991. What those acts say -- and it is a message we must listen to carefully -- is: Yes, we need to identify a National Highway System and to keep it in good repair. But we cannot continue to expand it at the expense of problems in our urban regions. And we must have more flexibility and tools to deal with those urban problems.

Our national economy is the sum of our regional economies. Improving mobility within those regions is just as much in the nation's interest as preserving mobility between them. We need an urban counterpart to the National Highway System -- something that will do for travel within our metropolitan areas what the NHS is supposed

to do for interstate travel. ISTEA defines a multi-modal metropolitan transportation system and provides the tools to improve that system. It does not exclude the possibilities for new highways, but it recognizes that the modes of travel which make sense inside metropolitan areas may be different from those outside them.

Congress is obliged to adopt a National Highway System within two years, and that is a worthwhile assignment. But we must bear in mind that our resources are limited. We must avoid the danger of becoming preoccupied with NHS at the expense of our regional needs. NHS is not the centerpiece of the new law. It is the parity of urban with inter-urban needs which is really at the heart of ISTEA.

That shift toward placing the needs of urban areas on a par with nationwide priorities has led to a major change in the decision-making process. It is an experiment in self-governance on a grand scale. If it succeeds, the metropolitan planning effort which ISTEA requires for project selection could represent a new day for democracy.

As you know, Metropolitan Planning Organizations have drawn the assignment for formulating those regional plans. But MPOs vary widely in their resources, credibility and stature. Some are only held together by the promise of federal funds and whatever regional statesmanship is politically practical. For many, the authority and responsibility for flexible decision-making is as much a curse as it is a blessing. This is particularly

true in regions where the air quality mandates imposed by ISTEA's tie to the Clean Air Act run counter to prevailing local attitudes that favor new growth and development.

To succeed, MPOs need nurturing and strengthening. We must strive to broaden their constituencies and to balance the interests they represent. We must see that their composition helps them carry out their assignment of flexible decision-making in a credible fashion. That means including representatives from both urban and rural areas, highway and transit interests, proponents of growth as well as defenders of the environment, and state government representatives as well as local leaders.

Many MPOs are doing exactly that. In Southwestern Pennsylvania, our board recently increased its representation from the City of Pittsburgh, included a representative from the Governor's office, and added the leaders of two transit agencies in the region. We have also established a broad based public-private policy committee and a series of subcommittees to guide the development of a new regional plan under ISTEA.

Consider, for a moment, what ISTEA mandates us to do. There are a series of national policies imposed on regional decisionmakers: fiscal restraint, emission reductions, six separate management systems, funding consideration for non-traditional modes, expanded public involvement, and an October 1993 deadline by which to

develop a plan that satisfies State Implementation Plan requirements under the Air Quality Act.

Each of these requirements affects the internal pressures for MPOs. Take fiscal restraint. Under ISTEA, we must show that we have the funds reasonably available to deliver what you promise. Project wish lists simply won't make it anymore. That forces MPO board members to change their political roles from advocates for projects in their own subdivisions to regional statesmen -- to make difficult trade-offs for projects which will satisfy national mandates and benefit the entire region. The pressures will be intense, and some elected officials will find it difficult to make this transition.

Clean Air Act mandates vary in harshness depending on each region's non-attainment status. Limits on growth or emission and travel reductions are inconsistent with most American's life styles. In most non-attainment areas, public opinion favors clean air, but not at the expense of economic development. But under the Act many regions will not be able to have it both ways. Although MPOs can always say "the devil made me do it," imposing unpopular travel reduction strategies will draw the wrath of many constituents. There is also growing evidence that some nonattainment regions may not be able to meet their required mobile emission reductions without extremely drastic actions.

The six management systems required by ISTEA force MPOs to focus first on improving their existing transportation systems. Pavement, bridge, safety and public transit management systems are essentially asset management requirements. The intermodal and congestion management systems require us to define the functions of existing systems and will tend to channel more resources into improving them. As a result, those MPO board members who are proponents of new highways for economic development are becoming very uncomfortable with requirements that focus most limited resources toward existing systems.

ISTEA's requirement that "incidental projects" such as bikeways, scenic areas, and rail-to-trail conversions be eligible for funding as "enhancements" to the transportation system, also affects the MPO's chemistry. Proponents of goods movement modes also want a seat at the table and a fair share of the limited pot of flexible money. That means more discomfort for MPO members.

On top of these difficult considerations, the entire planning and decision-making process must be carried out in a fish bowl with open-ended public involvement and ongoing scrutiny by the news media. Depending on how it's done, this can help or harm the MPO. The downside grows from the diversity of viewpoints and pressures that the MPO will be forced to consider. On the upside, if people are made aware of the process and the constraints under which it operates, public opinion could be rallied in support of a regional plan to take some pressure off MPO decision-makers.

If significant federal monies for transportation projects are the carrot enticing MPOs to succeed in this undertaking, the withholding of federal money is the stick. That stick could come down quickly because of the short deadline by which to fulfill the law's extensive requirements. On October 1, 1993, a regional plan that meets ISTEA's requirements and air quality SIP requirements must be in place. Particularly in non-attainment areas, where reductions in emissions must be achieved through unpopular measures, this may be the most severe requirement of them all. Some MPOs appear to be falling short of meeting that deadline. We may need additional time to allow the cooperative planning process to work to produce meaningful plans. That may be in all of our best interests to give the new process time to work. I suggest that this Committee hold hearings to examine the status of progress for MPO planning in nonattainment areas.

Will it work? I certainly hope so. With the mismatch that exists between regional problems on one hand, and our fragmented patchwork of state, county and municipal governments, on the other, empowered regional agencies may be our only real hope for successfully addressing those issues.

What will it take to make the new law work? For starters, it will take full funding for ISTEA. With the need so great for flexible funding, anything less than full authorized funding will add pressures for failure. Over the long term ISTEA has the potential to create a stronger national coalition for transportation funding because all of the partners

could eventually see their interest as improved mobility and environment rather than highway, transit or other fragmented interests.

It will require time and patience to develop the necessary tools. ISTEA is seminal legislation. The local planning and decision-making processes it requires won't be established overnight. People need to be educated. Draft regulations need to be rewritten and adopted. Mindsets need to be changed. Tools need to be developed. And comfortable working relationships will need to be established. At the same time good projects must not be delayed. Most regions can identify important projects that satisfy the intent of ISTEA while those new processes are being established.

We must accept the fact that both ISTEA and the Clean Air Act are now the law of the land. Many still don't understand the law's significance. Others who do are inclined to ignore it, or believe it will be repealed and that things will revert to the way they were done in the good old days. Some people and agencies resent their loss of influence under ISTEA. And until the new process comes to terms with these vested interests and projects in those pipelines, that resentment will continue.

Even though ISTEA is a federal law, the wrath of those opposing it are falling most heavily at the regional level, particularly on MPO executive directors. For better and for worse, they are the messengers of this new law. They are also its lightening

roads. But this serves a purpose, because once you get past the initial education and confrontation, you can start figuring out how to cooperate.

Even though ISTEA has been called the "planners' full employment act," MPOs are not executive directors and staff trying to advance their own agendas. MPOs are the responsible elected regional officials and appointed policy people who have been empowered under ISTEA to make difficult decisions within an open, cooperative process.

But it is a fragile process. It can be wrecked if one or more of the key parties refuses to work within that process. The spate of environmental lawsuits that have been filed signify what may happen if important interests feel excluded from the process. At the same time, though, I can't believe that our assignment is one we can delegate by default to the federal courts. Litigation will not yield a plan that anyone would care to live with. But the risk of it should concentrate our attention on the importance of succeeding through cooperation and compromise.

We must also work within our national organizations to ensure that the federal guidelines which are evolving, and the planning tools which are being devised, accurately reflect the nation's essential interests. I am convinced that much of ISTEA's ultimate failure or success will be determined by the draft federal guidelines now being considered. The devil lies in the details. And in this case, the most important details will be those defining regional and statewide plans, fiscal restraint, Transportation

Improvement Programs, project selection, clean air conformity, and the management systems -- particularly congestion management. I am heartened to see that draft regulations are now issued and they give better clarity to the required ISTEA process. But they still need some revision.

Let me suggest a few revisions that MPOs feel particularly strong about.

First, DOT must publish those final rules quickly. At best, we can expect those final rules by late summer. We are obligated to adopt comprehensive plans by October 1, 1993. We only have a few months to apply those final rules in our planning processes. That is not enough time.

DOT should reconsider the October 1, 1993 deadline for comprehensive regional plans. The draft regulations do not require State long-range plans or State Implementation Plans until 1995. Recent NARC surveys suggest that many nonattainment regions will have real difficulty in meeting the required 15% emission reductions in the period imposed by the deadline. Much of that problem is a result of EPA's failure to promulgate rules on time for emission inventory and conformity procedures. I suggest that this Committee consider holding hearings to establish the extent of the problem in various nonattainment regions and to determine if more time is needed for meaningful comprehensive regional plan.

Another factor that deserves more consideration in the draft DOT regulations are the management systems -- particularly the Congestion Management System. The Congestion Management along with the requirements for Air Quality Emission Reductions and Fiscal Restraint will be one of the three most significant shapers of our transportation systems under ISTEA.

The Congestion Management System requirements should clearly give MPOs in Transportation Management Areas the authority to implement Congestion Management Systems that broadly define and manage transportation systems from a comprehensive perspective -- not just levels of service on links on the National Highway System. Those broad measures should include the perspective and needs of all transportation users including highway and truck trips, transit trips (including unserved potential trips), and the function to provide accessibilities for desired development patterns. NARC will be submitting a coordinated series of comments on the draft regulations to DOT this week.

ISTEA includes many features that make it a good law for the times -- a balance between national and regional interests, cooperative decision-making, flexibility, fiscal responsibility, and broad involvement. The harshest and most difficult part of the Act is its tie to the Clean Air Act. That mandates MPOs to carry out national clean air policy within regions where prevailing attitudes often favor unrestrained economic development.

Because ISTEA is revolutionary and represents such a sharp break with past practice, it invites resentment, raises concerns, and comes with built-in problems. At the same time, though, I believe that ISTEA may be our only real hope for achieving national and regional transportation systems which are truly efficient, that support orderly economic growth, and which satisfy our mounting environmental concerns. It is a great experiment. Let's cooperate and do what is necessary to give it a chance to work.

Statement
of
Lester P. Lamm, President
Highway Users Federation
before
the
House Public Works and Transportation
Subcommittee on Surface Transportation

April 20, 1993

Hearing Topic: **Implementation of the Intermodal Surface
Transportation Efficiency Act of 1991**

Lester P. Lamm, President
Highway Users Federation
April 20, 1993

Good morning, Mr. Chairman and members of the subcommittee. I am Les Lamm, president of the Highway Users Federation. I appreciate this opportunity to outline the issues that concern our members with respect to implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

As the nation's largest, most diversified private sector organization dedicated to improving the safety and efficiency of our highway transportation system, the Highway Users Federation is keenly interested in the progress being made within federal, state, and local transportation agencies to implement ISTEA. A number of regulatory and administrative problems must be resolved, as one would expect given such sweeping changes in the highway program, and some important legislative hurdles lie ahead.

These hearings are an indication the subcommittee intends to monitor the implementation process closely and make ISTEA work to benefit the nation. That kind of active congressional oversight is needed, and our members appreciate it.

Legislation to designate the National Highway System (NHS) may afford the next opportunity for legislative update on the federal-aid highway program, so it is particularly appropriate that witnesses here have been asked to discuss progress in development of the NHS. Timely congressional approval of the NHS is the Highway Users Federation's top legislative priority. We want you to know why that road system is so important to our members and what obstacles we believe may delay its approval by Congress or dilute its many economic and social benefits.

Later this year, Secretary Peña must transmit to Congress a proposed 132,000- to 178,000-mile NHS. That proposal will be based on a review of maps submitted by each of the 50 states. It will include the 45,000-mile Interstate System and certain other highways denoted explicitly in ISTEA, and it will be an integrated network of the country's most important roads for trade and travel.

A system of that size will constitute only 4 percent of total road and street mileage in the U.S.; yet, the NHS will carry 40 percent of all highway travel and about 75 percent of our heavy truck traffic. It will be our highway system of interstate commerce and international trade, and it will allow vacation travelers to see, rather than fly over, America. For members of the Highway Users Federation, it represents our best opportunity to gain real increases in highway transportation productivity so our producers and suppliers can be competitive in the complex 21st century world economy.

Based on a review of maps already submitted to the Federal Highway Administration by some states, we expect the NHS will consist primarily of highways that exist today and daily carry farm products to market; commuters to work; tourists to new experiences; raw materials to factories; and finished goods to railheads, ports, and markets. We expect NHS program funds will provide welcome safety and service improvements to many of these facilities. In addition, there will likely be some new construction to serve developing corridors of international trade. We need to recall that the Interstate highway system map was laid out in the 1940's, and many important economic activities are imperfectly served by these routes.

Congress has reserved \$38 billion over 6 years for construction and maintenance on the NHS, although the states are given considerable discretion to transfer NHS funds to other transportation projects. This is a relatively small percentage of all federal highway dollars authorized in ISTEA. Concentrated on the NHS, however, those funds will enable the states to incorporate smart highway technologies, build additional lanes where needed, utilize good traffic management to increase capacity without adding lanes in urban areas (e.g., computerized signals, mobile lane dividers, etc.), and make design and safety improvements (e.g., wider lanes, thicker pavements, shoulders, guardrail, grade separations, etc.). Even with limited financial resources, improvements such as these are feasible on a defined, relatively small network of roads and bridges.

Lester P. Lamm, President
Highway Users Federation
April 20, 1993

Since the NHS will carry the bulk of our commercial and personal highway travel, the benefits of this investment (i.e., increased productivity, fewer fatalities and injuries, and more efficient movement of goods and people) will be magnified. Those productivity, safety, and efficiency gains may well be essential to our future economic growth, particularly our ability to compete in a worldwide market. With many of America's most valuable export products traveling at least 1,500 miles from production site to a water port -- as compared to an average 300-mile surface trip for European exports and a 30-mile trip for Japanese products -- it isn't difficult to understand the importance of transportation productivity in maintaining the competitive edge of U.S. producers.

Since this Congress may also consider legislation related to the North American Free Trade Agreement (NAFTA), it is worth noting that only 16 Interstate highways connect Canadian and Mexican highways along the U.S. border. That's about one high-capacity route for every 300 miles of border.

If we expect to reap the economic, social, and political advantage promised by proponents of NAFTA, we must be able to move a greater volume of vehicles across our borders. The NHS should help provide that additional capacity. Based on discussions with border state officials, we expect new routes incorporated in the NHS and other procedural improvements to at least double the throughput capacity of major border crossings, affording the equivalent of high-capacity service every 150 miles.

The implications for international trade, the potential safety improvements, and the prospect of substantial productivity increases make the NHS the centerpiece of ISTEA in our view. Our members would like to assist the committee and DOT to ensure enactment of legislation designating the NHS well in advance of the September 30, 1995 deadline established in ISTEA. However, we foresee some issues which, if not addressed, could delay or prevent enactment of a workable NHS.

For instance, the NHS legislation is likely to involve debate on the usual variety of contentious issues associated with highway bills. Changes in the apportionment formulae, revised funding levels for particular program categories, treatment of specific projects and a host of other issues are likely to be debated, as well as concern over coverage and content of the proposed NHS itself. Any of these issues has the potential to delay enactment of the NHS.

Meanwhile, skepticism about the NHS remains strong in some politically important quarters. We have heard that some state and local officials are concerned the NHS will divert money away from local transportation projects. Other state transportation officials, while supporting the NHS in concept, will not be active supporters until they are satisfied the FHWA draft proposal meets their state transportation needs. Some groups apparently feel that approval of the NHS will mean thousands of miles of new pavement laid over previously untouched acres of American soil. And other people simply oppose any highway improvement that makes it easier for people to live in one place and work in another.

Anticipating potential obstacles to passage of the NHS legislation, Congress included in ISTEA a provision requiring the Secretary of Transportation to withhold NHS and Interstate maintenance funds if the NHS approval deadline is not met. Unfortunately, some groups are likely to see that provision as an opportunity rather than a threat. The funds to be withheld are substantial -- \$6.5 billion in each of fiscal years 1996 and 1997. Some groups may see Congressional gridlock on the NHS as an opportunity to divert that money to projects or programs of more immediate interest to their members.

While various groups and competing issues may work to delay passage of the NHS legislation, other factors make it difficult to build the public and political support necessary to ensure timely congressional action. For

Lester P. Lamm, President
Highway Users Federation
April 20, 1993

instance, many business owners whose livelihood depends on improved highways are unaware that the states and FHWA are currently deciding which routes to propose for inclusion in the NHS. And while we await maps with proposed NHS routes in each state, this vital road network is difficult to describe or define so that average citizens can understand clearly its value to them and their communities.

These are just a few of the issues we see that could delay action on the NHS legislation. Members of this committee have been early, strong supporters of the NHS, and our members appreciate your foresight and commitment. We urge you to pursue actively your oversight role to help heighten public awareness and interest in the designation of America's most important roads. I assure you the Highway Users Federation will be doing everything possible to help build constituent support for designating the NHS ahead of schedule.

Mr. Chairman, neither the NHS nor any of the other important programs included in ISTEA can be properly implemented without sufficient funds. In March, I wrote to Secretary Peña indicating our members' strong support for the additional \$2.976 billion for highways included in the President's economic stimulus package for 1993. In addition, Highway User Conferences in almost every state have written their congressional delegations to indicate the importance of fully funding the highway program.

We also have praised President Clinton's decision to recommend full funding -- \$20.6 billion -- for the highway program in his FY 1994 budget. In combination with the stimulus package, the Clinton Administration now has recommended two years of full funding for this most important infrastructure program. The nation will be well served if this funding request is approved.

Our current financial resources, even if Congress provides funding at ISTEA levels, are insufficient to meet the country's highway and bridge construction

needs. FHWA's 1993 report on the condition of our roads and bridges indicates all levels of government spent \$36.1 billion on highway and bridge capital improvements in 1991, but \$51.6 billion should be spent just to maintain current conditions. In order to improve road and bridge conditions to an acceptable level, annual capital funding should be \$67.3 billion. For the sake of our economic future, we ought to be investing more public and private capital in highway infrastructure.

The prospect of full ISTEA funding and the need for even more investment raises another important concern. The General Accounting Office (GAO) has indicated the highway account will fall \$12.5 billion short of ISTEA's funding commitments to the states by the end of FY 1997 unless additional revenues are found. That means FHWA would have to cut state highway apportionments by approximately \$4 billion in each of fiscal years 1995, 1996, and 1997, putting the country even further behind in our goal of meeting highway and bridge improvement needs.

Given the prospect of these automatic, devastating cuts in the highway program, the Administration has wisely proposed to recapture for transportation programs the revenues from the 2.5 cents-per-gallon federal fuel tax now going to the general fund. We think it was a bad precedent when those taxes were diverted away from the Highway Trust Fund in the 1990 budget agreement. If the taxes now scheduled to expire in 1995 are to be permanently extended, as the Administration proposes, they must go to the Highway Trust Fund in order to permit full highway funding in the last three years of ISTEA.

We hope this committee will convey to your Ways and Means Committee colleagues the importance of this element in the President's tax package. Highway funding reductions of the magnitude predicted by GAO would be debilitating to our national economy. Lost jobs would only be the beginning; our lost ability to compete against foreign producers might well

Lester P. Lamm, President
Highway Users Federation
April 20, 1993

be the end of U.S. economic expansion. Taxpaying highway users across the country urge this Congress to dedicate all federal fuel taxes to our transportation programs.

Thank you, Mr. Chairman, for this opportunity to discuss the interests and concerns of highway users. We look forward to working with you and your staff on highway funding issues and early approval of America's National Highway System.

Statement of
THE HONORABLE JOSEPH PRESTON
REPRESENTATIVE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
VICE CHAIR
TRANSPORTATION COMMITTEE
NATIONAL CONFERENCE OF STATE LEGISLATURES

before

the Surface Transportation Subcommittee
Public Works and Transportation Committee
U.S. House of Representatives

on the implementation of
the Surface Transportation Efficiency Act of 1991

April 20, 1993

Mr. Chairman, members of the Subcommittee, I am pleased to be here today joining Representative Roy in describing the state experience in implementing the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The state of Pennsylvania has certainly benefited over the years from the careful stewardship of members of the Pennsylvania delegation who have served on the Public Works and Transportation Committee.

This is particularly important, given the diversity of transportation interests in the state. It is often difficult to balance the needs of those who reside in heavily populated urban centers with those who must travel miles between population centers.

Those of us in the Pennsylvania legislature were given an "assist" by Congress in this regard a few years ago. In our efforts to balance these oftentimes competing urban and rural needs in the state, we had not successfully satisfied everyone involved.

While it was not the handiwork of this Committee which compelled us to resolve funding imbalances, a Congressional mandate requiring that the Pennsylvania State Legislature enact a dedicated revenue source to finance transit systems motivated us. A threatened 25 percent withholding sanction of the state's federal-aid highway funds was a powerful incentive.

However, in the interest of maintaining a true state-federal partnership, I implore you to refrain from using this approach. If a requirement imposed upon states is truly a grant condition, then states will willingly take steps to comply. But I have to tell you that the proliferation of federal mandates is pushing states to the saturation point.

Prior to the enactment of ISTEA, there were 14-15 mandates with which failure to comply resulted in a penalty of five to ten percent loss of highway apportionment. With the passage of ISTEA, I think that number doubled overnight. However, the newer mandates are a variation on the theme.

For instance, there are a few mandates where a state does not actually lose money, it is just "transferred" into another category. But most pressing, is a mandate that states adopt laws to revoke drivers licenses of anyone convicted of a drug violation. While this mandate provides for an innovative "opt out" provision, only a handful of states were certified in compliance as of the April 1, 1993 regulatory compliance date.

At a minimum, I ask that this Subcommittee take steps to extend the deadline for compliance. The regulations were issued in August 1992, giving some states just their short 1993 session to deal with this matter.

Better Congress take the approach utilized by Representative Roy in his Travelink initiative. This is a program in Delaware which provides a financial incentive to employers to establish viable commuting options. From what I understand, it has been quite successful. Now in Pittsburgh, of which I represent a portion, the general topography and demography give an advantage to promoting public transportation. One of the innovative approaches to alleviating congestion in Pittsburgh has been the creation of exclusive busways to mitigate traffic congestion.

I mention these two examples to highlight how the solution to a problem in one jurisdiction is not identical to the solution in another. This type of innovation should be fostered through federal-aid transportation programs, never mandated.

As Representative Roy mentioned in his statement, the proliferation of unfunded mandates threatens to undermine state transportation planning activities. Let us not forget that the impact of transportation is on more than just transportation. The movement, or lack thereof, of people and goods determines the economic growth or the demise of communities.

I am hopeful that the opportunity to review and approve the National Highway System will be an a chance to focus on the integration of a national system to the benefit of all the states. Not to long ago, the seemingly simple act of approving the Interstate Cost Estimate became a vehicle of leverage for every quasi-related transportation concern.

NCSL supports the swift unencumbered approval of the NHS and also supports the development of a similar national transit network. The interconnectivity of people and opportunity will ultimately define the economic health of our nation.

In closing, I call upon you to do what you can to eliminate the obstacles to implementing ISTE. We want to succeed. We want to comply. But we cannot if the costs of compliance are too cumbersome or too great.

Statement of
THE HONORABLE ROGER ROY
REPRESENTATIVE
DELAWARE HOUSE OF REPRESENTATIVES
CHAIR
TRANSPORTATION COMMITTEE
NATIONAL CONFERENCE OF STATE LEGISLATURES

before

the Surface Transportation Subcommittee
Public Works and Transportation Committee
U.S. House of Representatives

on the implementation of
the Surface Transportation Efficiency Act of 1991

April 20, 1993

Mr. Chairman, members of the Subcommittee, I would like to thank you for convening this hearing to examine how the Intermodal Surface Transportation Efficiency Act (ISTEA) is being implemented in the states. I am here on behalf of the National Conference of State Legislatures (NCSL) to share with you NCSL's positions on ISTEA and also to give you the perspective of the State of Delaware.

I serve as the NCSL Transportation Committee Chair, and I am pleased to be joined here today by the Committee Vice Chair, Representative Joe Preston of Pennsylvania. Although we serve in neighboring states, the contrasting transportation demands in our states illustrates the ever present need for federal aid programs which accommodate this variety.

In 1991, when Congress enacted ISTEA, the legislation was viewed as a bold leap into the 21st century. At this stage of the implementation process, I think it is safe to say that ISTEA will move us into the next century, but one small step at a time.

NCSL has for years stressed the desirability of consolidating and streamlining federal transportation programs in order to provide states with needed flexibility. Congress listened and responded with a reduction in program categories and flexibility to move funds to categories where the state deemed necessary. As part of the bargain, Congress made a commitment to increased funding to carry out the new programs and requirements. Unfortunately, funding reductions and uncertainty have hampered states' ability to implement ISTEA.

NCSL supports efforts underway through the supplemental appropriations process to fully fund ISTEA programs at the level they were authorized. There is absolutely no way that the states have a prayer of complying with the multitude of regulatory requirements without adequate funding.

I would like to spend a few minutes highlighting the efforts of states to respond to the various requirements that are embodied in ISTEA. Lest there be any misunderstanding regarding the flexibility permitted states in these programs, let me assure you that any latitude in decision making goes hand in hand with accountability. In order to take advantage of this increased level of flexibility, states must establish enhanced public participation; incorporate Metropolitan Planning Organization input to state transportation plans; develop extensive management plans; and basically justify all programming decisions.

The concept of "flexibility" is a far cry from the reality of flexibility. Under current law, there is a presumption that all participants in the transportation planning process will want to be flexible in the same way at the same time. There is a presumption that there is some comparability standard which provides guidance to states in measuring the relative merits of a bike path versus a roadway. There is a presumption that everyone involved in the process is operating from the same baseline of information and definition of terminology. This is clearly not the case.

And most importantly, there is a presumption that having enacted a Clean Air Act and an ISTEA which were not at cross purposes, they would therefore be rendered compatible. I suggest to you today that the conformity requirements alone (which attempt to pull these two acts together), threaten to bring state transportation programs to a grinding halt.

While all of the relevant federal requirements are very tidily interwoven, they are also heavily interdependent. If a states falls short in one area, the system breaks down. In Delaware, we are working most diligently on implementing the six management systems required under ISTEA. Where are we? We have a committee working on the establishment of these management systems.

The difficulty is in the concurrence of ISTEA requirements. The management systems, once established, will effectively drive planning decisions. In the meantime, the state must move forward on both short and long-term state transportation plans.

We are making a concerted effort to meet the challenges that were presented to us in ISTEA. We are struggling, however, by inadequacies in planning analysis. How do we accurately assess the future demands of the traveling public when obviously the decisions made today will influence transportation demands in the future?

We have found that in order to fully embrace the ideals of ISTEA, we are having to change the mindset of the players from one of "winners and losers." It is clear that in a successfully integrated state transportation plan, modes should not compete, but complement, each other. In this regard, we have welcomed the increased participation requirements. However, it would be foolhardy for state transportation planners to assume that only those who participate publicly hold a stake in state transportation decisions.

As in Delaware, states across the land, are doing their best to adjust to and meet the challenges of ISTEA. But these adjustments will not come overnight. The structure of ISTEA is a radical departure from past federal-aid surface transportation programs. As ISTEA is a reimbursement program, I ask that you bear in mind that it is the state which must initially finance all projects. As such, planning and budgeting are intertwined in state legislative activity. The changes will come, but over time, in a thoughtful and careful manner. In the meantime, on behalf of all the state legislatures, I ask that you ensure that adequate time is available for the transition to this new program structure.

In the meantime, the states' ability to implement ISTEA is being seriously undermined through underfunding; cross-cutting requirements; unfunded mandates and threats of legal action from those who differ with state and federal interpretation of the law. NCSL requests that this Subcommittee makes specific recommendations to

provide relief from these impediments to implementation.

As with any legislation of this magnitude, there is fine tuning needed. ISTEA remains, however, an exceptional blueprint for a new state-federal transportation partnership. We look forward to assisting in your work to further refine the state-federal transportation partnership. Thank you for this opportunity to share my views with you today.

**NATIONAL
ASSOCIATION
of
COUNTIES**

*440 First St. NW, Washington, DC 20001
202/393-6226*

STATEMENT BY

THE HONORABLE ANDREW WARREN

CHAIR, BUCKS COUNTY, PENNSYLVANIA

BOARD OF COMMISSIONERS

AND

CHAIR, TRANSPORTATION STEERING COMMITTEE

NATIONAL ASSOCIATION OF COUNTIES

ON

IMPLEMENTATION OF THE

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

BEFORE

THE SUBCOMMITTEE ON SURFACE TRANSPORTATION

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

ON BEHALF OF

THE NATIONAL ASSOCIATION OF COUNTIES

APRIL 20, 1993

WASHINGTON, DC

MR. CHAIRMAN, MY NAME IS ANDREW WARREN. I AM CHAIR OF THE BUCKS COUNTY, PENNSYLVANIA BOARD OF COMMISSIONERS AND TODAY AM REPRESENTING THE NATIONAL ASSOCIATION OF COUNTIES (NACO) WHERE I SERVE AS CHAIR OF THE TRANSPORTATION STEERING COMMITTEE.*

WE ARE PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY ON THE IMPLEMENTATION OF ISTEA. THE NACO MEMBERSHIP WORKED VERY HARD ON THIS LEGISLATION AND IT HAS A SIGNIFICANT IMPACT ON COUNTY GOVERNMENTS. AS MANY OF THE MEMBERS OF THIS SUBCOMMITTEE KNOW, COUNTIES ARE RESPONSIBLE FOR 1.7 MILLION MILES OF ROADS OR 43 PERCENT OF THE TOTAL ROAD MILEAGE IN THE UNITED STATES. WE ALSO OWN 219,000 BRIDGES, 45 PERCENT OF THE NATION'S BRIDGES, AND OPERATE ONE-THIRD OF THE TRANSIT SYSTEMS.

ISTEA WAS SIGNED INTO LAW JUST 15 MONTHS AGO AND SOME OF THE MAJOR REGULATIONS IMPLEMENTING THE LEGISLATION ARE STILL PENDING. IN MANY WAYS IT IS PREMATURE TO MAKE ANY MAJOR CONCLUSIONS ABOUT THE HOW IT HAS IMPACTED ON COUNTIES. HOWEVER, WE DO HAVE SOME IMPRESSIONS ABOUT HOW THINGS ARE GOING. WE HAVE HAD THREE NACO CONFERENCES SINCE THE LEGISLATION PASSED AND HAVE OBTAINED FEEDBACK FROM OUR MEMBERS AT THESE EVENTS. NACO, ALONG WITH THE

* The National Association of Counties is the only national organization representating county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive, county government. The goals of the organization are to: improve county government; serve as the national spokesman for county government; act as a liaison between the nation's counties and other levels of government; achieve public understanding of the role of counties in the federal system.

FEDERAL HIGHWAY ADMINISTRATION, FEDERAL TRANSIT ADMINISTRATION AND THE U.S. DEPARTMENT OF AGRICULTURE HAS SPONSORED EIGHT REGIONAL WORKSHOPS ON ISTEA IMPLEMENTATION FOR SMALL URBAN AND RURAL COMMUNITIES AND WE HAVE RECEIVED A VARIETY OF IMPRESSIONS FROM ATTENDEES AT THOSE SESSIONS. ADDITIONALLY, OUR STAFF HAS INTERVIEWED MEMBERS OF NACO'S TRANSPORTATION COMMITTEE AND CONTACTED A NUMBER OF STATE ASSOCIATIONS OF COUNTIES TO GET THEIR OPINIONS.

NOT SURPRISINGLY, IMPLEMENTATION OF ISTEA FROM THE COUNTY'S POINT OF VIEW DIFFERS FROM STATE TO STATE AND FROM METROPOLITAN AREA TO METROPOLITAN AREA. I WOULD LIKE TO COVER A NUMBER OF TOPICS UPON WHICH OUR MEMBERS HAVE COMMENTED, INCLUDING FUNDING, STATE-LOCAL RELATIONSHIPS, PLANNING/MPO, FLEXIBILITY, ENHANCEMENTS, TRANSIT AND RURAL ISSUES.

FUNDING

OUR MEMBERS HAVE BEEN DISAPPOINTED BY THE LEVEL OF FUNDING FOR BOTH THE HIGHWAY AND TRANSIT PROVISIONS OF ISTEA. EXPECTATIONS WERE HIGH WITH THE PASSAGE OF THE ACT AND FAILURE TO FULLY FUND THE LEGISLATION MAY DAMPEN COUNTIES ENTHUSIASM FOR ISTEA. THREE ACTIONS CAN BE TAKEN IMMEDIATELY WHICH WILL HELP THE FUNDING SITUATION:

- * ADOPT PRESIDENT CLINTON'S STIMULUS PACKAGE
- * ADOPT THE FUNDING LEVELS CONTAINED IN THE ADMINISTRATION'S FY94 BUDGET REQUEST FOR HIGHWAYS AND TRANSIT
- * RECAPTURE THE 2.5 CENTS IN GASOLINE TAX FOR TRANSPORTATION PURPOSES WHICH SINCE 1990 HAS GONE TO DEFICIT REDUCTION.

STATE-LOCAL RELATIONSHIP

ONE OF THE KEYS TO A SUCCESSFUL IMPLEMENTATION OF ISTEA IS A POSITIVE TWO-WAY RELATIONSHIP BETWEEN THE STATE AND COUNTY GOVERNMENTS. THESE RELATIONSHIP HAVE ALWAYS BEEN UNEVEN ACROSS THE COUNTRY, GENERALLY REVOLVING AROUND HOW OPEN STATE DOTs ARE TO COUNTY GOVERNMENT INPUT. NACO HAD HOPED THAT ISTEA WOULD USHER IN A NEW DAY OF STATE-COUNTY COOPERATION AND, IN GENERAL, IT APPEARS AS IF THESE RELATIONSHIP ARE MORE POSITIVE THAN NEGATIVE. COUNTIES IN URBAN AREAS ARE STARTING TO ASSERT THEIR AUTHORITY THROUGH THEIR RESPECTIVE MPOs. HOWEVER, THERE ARE SEVERAL STATES WHERE RELATIONSHIPS CONTINUE TO BE POOR, PARTICULARLY AS IT AFFECTS RURAL COUNTIES. THERE ARE OTHERS WHERE A GOOD RELATIONSHIP HAS BECOME LESS SO. WHILE THE FEDERAL HIGHWAY ADMINISTRATION HAS BEEN VERY GOOD ABOUT EXPLAINING ISTEA WE WOULD URGE CONTINUED VIGILANCE IN SEEING THAT BOTH THE LETTER AND THE SPIRIT OF THE LAW ARE CARRIED OUT. FURTHER, WE HOPE THAT OFFICIALS IN FHWA'S REGIONAL AND DISTRICT OFFICES WILL BE AVAILABLE TO COUNTY GOVERNMENTS TO HELP SOLVE PROBLEMS WITH STATE DOTs.

PLANNING/METROPOLITAN PLANNING ORGANIZATIONS

THE LATENESS OF THE METROPOLITAN AND STATEWIDE PLANNING REGULATIONS HAS BEEN A PROBLEM IN SOME AREAS. THAT IS PARTICULARLY TRUE FOR COUNTIES IN METROPOLITAN AREAS WHICH HAVE HAD LITTLE EXPERIENCE WITH A MPO AND IN NON-METROPOLITAN AREAS WHICH NOW ARE TO BE PART OF THE STATEWIDING PLANNING PROCESS. NACO CONSIDERS IT VERY IMPORTANT THAT THE NON-METROPOLITAN COUNTIES OR RURAL COUNTIES BE BROUGHT INTO THAT PROCESS, PARTICULARLY AS IT RELATES TO PROJECT SELECTION. THE LAW IS CLEAR THAT THE STATE MUST COOPERATE WITH LOCAL GOVERNMENT IN PROJECT SELECTION AND OUR MEMBERS EXPECT THAT TO BE A SERIOUS PROCESS.

A MAJOR FEATURE OF ISTEa WAS TO GIVE MPOs MORE AUTHORITY. THIS APPEARS TO BE WORKING IN THOSE AREAS WHICH HAVE HAD WELL ESTABLISHED MPO'S, SUCH THE CHICAGO, KANSAS CITY, AND SAN FRANCISCO BAY AREAS. IN MY OWN AREA, THE MPO CONSISTS OF 4 COUNTIES IN PENNSYLVANIA, THE CITY OF PHILADELPHIA, AND FIVE COUNTIES IN NEW JERSEY. HISTORICALLY THE TWO STATES HAVE DOMINATED THE MPO AND THAT CONTINUES TO BE THE CASE. IN SOME OTHER AREAS WHICH HAVE LESS EXPERIENCE WITH MPOs OR WHERE THE MPO HAS HAD LITTLE TO DO, THEY ARE NOT YET OPERATING AS ENVISIONED BY THE LAW. ADDITIONALLY WE HAVE HEARD OF SEVERAL EXAMPLES OF BOUNDARY PROBLEMS, SPECIFICALLY IN THOSE AREAS WHERE UNDER THE PROVISIONS OF ISTEa COUNTIES WHICH CONSIDER THEMSELVES RURAL NOW FIND THEMSELVES PART OF A METROPOLITAN AREA.

FLEXIBILITY

A MAJOR NEW PROVISION OF ISTEA WAS TO MAKE A SUBSTANTIAL PORTION OF THE ISTEA FUNDS FLEXIBLE, PARTICULARLY BETWEEN HIGHWAY AND TRANSIT. THIS DOES APPEAR TO BE HAPPENING IN SELECTED METROPOLITAN AREAS. WE WOULD EXPECT IT TO OCCUR MORE AS THE LAW IS FULLY IMPLEMENTED, PARTICULARLY IF THE FEDERAL TRANSIT PROGRAM CONTINUES TO BE SUBSTANTIALLY UNDERFUNDED.

ENHANCEMENTS

WE HAVE HEARD A NUMBER OF COMMENTS ABOUT THE ENHANCEMENT PROVISIONS OF THE ACT. SOME HAVE BEEN VERY POSITIVE IN THAT COUNTIES HAVE BEEN ABLE TO UTILIZE THIS FUNDING SOURCE FOR PROJECTS. IN SEVERAL CASES WE HAVE HEARD THAT THE STATES HAVE NOT INFORMED COUNTIES OF THE AVAILABILITY OF THE FUNDS OR HAVE NOT SHARED THE FUNDS WITH COUNTIES.

TRANSIT PROGRAM

THE TRANSIT PROGRAM SEEMS TO BE DOING WELL. PART OF THIS IS BECAUSE THE CHANGES IN THE PROGRAM WERE NOT AS DRAMATIC AS ON THE HIGHWAY SIDE. THE FACT THAT COUNTIES AND TRANSIT AGENCIES GENERALLY DO NOT HAVE TO DEAL WITH THE STATES IN REGARD TO FEDERAL TRANSIT FUNDING, EXCEPT FOR SECTION 18, MAKES THE THE PROCESS SIMPLER FOR LOCAL GOVERNMENT. LET ME REITERATE AGAIN THAT TRANSIT NEEDS SUBSTANTIALLY MORE FUNDING IN ORDER TO PROVIDE A REASONABLE LEVEL OF SERVICE AND TO MEET THE REQUIREMENTS OF THE

AMERICANS WITH DISABILITIES ACT AND THE CLEAN AIR ACT.

RURAL ISSUES

THE FEDERAL BRIDGE PROGRAM HAS ALWAYS BEEN VERY IMPORTANT TO RURAL COUNTY GOVERNMENTS. IF THE HIGHWAY SECTION OF ISTEA IS FULLY FUNDED COUNTY GOVERNMENTS SHOULD DERIVE A SUBSTANTIAL BENEFIT FROM THE INCREASED AUTHORIZATION FOR THE BRIDGE PROGRAM. HOWEVER, THERE CONTINUES TO BE A CONCERN IN SOME STATES THAT COUNTIES ARE NOT RECEIVING A FAIR SHARE OF THE HIGHWAY FUNDS THROUGH THE SURFACE TRANSPORTATION PROGRAM. WITH THE ELIMINATION OF THE SECONDARY HIGHWAY PROGRAM THERE IS NO LONGER A PROGRAM WHICH SPECIFICALLY TARGETS THOSE TYPES OF ROADS WHICH RURAL COUNTIES OFTEN OWN AND MAINTAIN. ISTEA DOES CONTAIN A PROVISION THAT REQUIRES STATES TO OBLIGATE IN AREAS OF A STATE WITH LESS THAN 5000 POPULATIONS AN AMOUNT OF STP FUNDS OF NOT LESS THAN 110 PERCENT OF THE AMOUNT OF FUNDS APPORTIONED TO THE STATE FOR THE FEDERAL-AID SECONDARY SYSTEM FOR FY1991. THE WAY THIS SECTION OF THE LAW IS BEING INTERPRETED IS THAT THESE FUNDS CAN BE SPENT ON ANY ROAD WHICH GOES THROUGH AN AREA OF LESS THAN 5000 PERSONS SO THAT SPENDING THIS MONEY ON A RURAL INTERSTATE WOULD FULFILL THE REQUIREMENTS OF THE PROVISION. WE RECOMMEND THAT A CLARIFICATION IN THE LAW BE MADE TO LIMIT THIS SPECIAL RULE TO SECONDARY SYSTEM-TYPE ROADS, SUCH AS MAJOR RURAL COLLECTORS.

MR. CHAIRMAN, THIS CONCLUDES MY TESTIMONY. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE AND WOULD WELCOME ANY QUESTIONS YOU OR OTHER MEMBERS WOULD HAVE.

ADDITIONS TO THE RECORD

Roy Roemer
Governor of Colorado
Chairman

Carroll A. Campbell Jr.
Governor of South Carolina
Vice Chairman

Raymond C. Scheppach
Executive Director

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1572
Telephone (202) 624-5300



June 4, 1993

The Honorable Nick Joe Rahall
Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
B-376 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for inviting the National Governors' Association to testify during your recent series of oversight hearings regarding the Intermodal Surface Transportation Efficiency Act of 1991. Regrettably, we were not able to accept your invitation but we do appreciate the opportunity to submit this statement for the record.

Please let us know if you have any questions or if we can be of any further assistance.

Sincerely,

Governor Jim Edgar
Chairman, Committee on Economic
Development and Commerce

Governor Bob Miller
Lead Governor on
Surface Transportation

T E S T I M O N Y



Statement (for the record)

of

**Governor Jim Edgar, Illinois
Chair, Committee on Economic Development and Commerce**

and

**Governor Bob Miller, Nevada
Lead Governor on Surface Transportation**

before the

**Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives**

on

Oversight of the Intermodal Surface Transportation Efficiency Act of 1991

April 20, 1993

NATIONAL GOVERNORS' ASSOCIATION

Hall of the States • 444 North Capitol Street • Washington, DC 20001-1572 • (202) 624-5300

Mr. Chairman and members of the Subcommittee, the nation's Governors appreciate the opportunity to provide a statement for the record on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Governors have a number of concerns about the implementation of ISTEA that we would like to share.

Full Funding of ISTEA. Governors are united in their conviction that the single most important ingredient for effective implementation is full funding of the Intermodal Surface Transportation Efficiency Act of 1991. ISTEA was a commitment made by the federal government acknowledging the fundamental necessity of an effective surface transportation infrastructure to ensure national economic prosperity. ISTEA is a promise to address the nation's critical infrastructure needs and a recognition that states are best equipped to meet this enormous challenge. ISTEA is a pledge based on irrefutable evidence that infrastructure investment works and that this strategy pays off in the long run as well as in the short term. Governors are so convinced of the benefits of infrastructure investment that states and localities now provide about four-fifths of the money spent on surface transportation.

However, the federal government has not followed through on its promise. As a result, states are handicapped because of uncertainty about whether ISTEA's potential will be realized with sufficient funding. Full funding is not simply more money, it is the money necessary to make the programs contained in ISTEA work in the manner intended.

Perhaps it is his gubernatorial experience that inspired President Clinton's decision to propose full funding for ISTEA in his fiscal 1994 budget. We also are pleased with his affirmation of the Governors' recommendation to maintain the integrity of the gas tax by insisting that revenues generated through this tax be deposited in the Highway Trust Fund where they belong.

Mandates. ISTEA also created additional federal mandates. States were already required to adhere to more than a dozen requirements or run the risk of losing substantial federal surface transportation funds. One of the most recent mandates is the requirement that states adopt a law to revoke the drivers' licenses of those convicted of a drug violation or "opt out" of such

a law if both the Governor and state legislature agree. Less than half the states have been able to meet this mandate in the prescribed timeframe, and when the deadline is reached it is likely that several states will lose 5 percent of their fiscal 1994 highway construction funds because they cannot comply. Such conditions further frustrate the ability to adequately fund surface transportation.

National Highway System. The Governors look forward to working with Congress and the Federal Highway Administration to develop a National Highway System (NHS), which is in the best interests of the nation and states. Even before the NHS was created, Governors had endorsed the principle of establishing a highway system of national significance as critical to the nation's economic vitality. Stable funding will be essential for the effective operation and management of the NHS.

The American Association of State Highway and Transportation Officials (AASHTO) recently passed resolutions urging states, the Federal Highway Administration, and Congress to act promptly on the ISTEA directive to designate an NHS. We endorse their views and pledge that states will do their part to ensure successful consideration of authorizing legislation in 1995.

State Relationships with Metropolitan Planning Organizations. ISTEA requires the development of formal mechanisms for intergovernmental cooperation. Metropolitan Planning Organizations (MPOs) now have a regulated means for participating in the planning of state transportation programs. During the oversight hearings, you heard from an MPO that expressed dissatisfaction with the willingness of its state to cooperate. We believe this is an isolated case. First, states have routinely made an effort to consult with MPOs and draw upon their expertise in planning effective state transportation programs. Second, both states and MPOs recognize that in many cases ISTEA represents a new way of doing business. Time and effort are required to build the effective relationships needed to ensure that the goals of ISTEA will be met.

NGA Clean Air/ISTEA Conference. One way states are working to enhance state and MPO cooperation is the proposed NGA symposium for state and federal senior

executives on the issue of transportation conformity. The passage of ISTEA and the Clean Air Act Amendments of 1990 have underscored the need for states to link transportation and clean air objectives. State transportation efforts will have to conform to the state's clean air goals. The conference would provide Governors' staff the opportunity to meet with federal officials and representatives from local planning agencies and environmental groups to determine what the new clear air regulations require and how these goals can best be met.

Base State Working Group. Effective implementation of ISTEA depends on a strong state-federal partnership. The strength of this bond is clearly reflected in the Base State Working Group (BSWG) that facilitates universal state participation in the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP). As directed by Section 4008 of ISTEA, NGA has coordinated the efforts of the American Association of Motor Vehicle Administrators, the Federation of Tax Administrators, the International Fuel Tax Agreement, Inc., the Regional Fuel Tax Agreement, Inc., and the National Conference of State Legislatures since April 1992, when a working group was appointed by the U.S. Secretary of Transportation. The working group will identify the most effective means for states to enter the program or upgrade their procedures to carry out universal participation.

However, while Congress authorized \$5 million in uniformity grants under Section 4008, fiscal 1993 appropriations cut the funds in half, leaving state efforts in limbo. The original \$5 million authorization covered only a portion of the costs to states, and we saw the uniformity grants as a commitment by the federal government to share at least part of the expense. States now must decide how to respond to the mandate of converting the previously voluntary IFTA and IRP programs into mandatory programs for states, with substantially less federal support.

We ask the members of this Subcommittee to urge members of the Appropriations Committee to fulfill the federal commitment to the Base State Working Group.

Conclusion. States have long assumed the responsibility for designing and managing transportation programs that will most effectively serve the needs of

their citizens. States also have long-term experience in accommodating the different requirements of the federal surface transportation programs that have been authorized over the years. ISTEA is the most radical change to surface transportation since the establishment of the interstate highway program in 1955. States are drawing upon their expertise in adapting their processes and programs to the new features of ISTEA, and we are adjusting at variable speeds. Given full funding throughout the life of ISTEA, Governors will see to it that states continue to progress and that implementation will be smooth in the coming years as states, regions, and local communities work together to build long-term strategic plans and operational models for cooperation.

Please call upon us if you require any further information or assistance.



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

50 MAY 17 1993

FRANKLIN E. WHITE
COMMISSIONER

May 13, 1993

Hon. Nick J. Rahall, II
Chairman, Subcommittee on
Surface Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rahall:

The New York State Department of Transportation submits the attached testimony to the House Surface Transportation Subcommittee on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. We request the Subcommittee to consider New York's comments in its deliberations on oversight of the Act. The prepared testimony highlights how New York State has implemented the many features of this landmark bill and has lived up to the spirit of ISTEA. Although only 16 months have passed since enactment, we are already well underway to meeting the new Congressional direction set in the Act.

New York has fully utilized the federal highway funding provided in ISTEA to date, mostly to rehabilitate our extensive network of heavily utilized highways, bridges, and transit systems. The ambitious \$9.6 billion, four-year capital program for highways and bridges recently authorized in State legislation assumes that Congress will fully fund the authorization contained in ISTEA. The lack of full funding of ISTEA highway and transit authorizations in FFY 1993 is adversely affecting our construction letting schedules and requires us to advance fund highway construction projects this year. Even when fully funded and combined with substantial state and local resources, the funds provided in ISTEA will not meet currently identified capital needs. We urge Congress, at a minimum, to fulfill its obligation to State and local governments and fully fund both the highway and transit authorizations in ISTEA. The goals of ISTEA cannot be fulfilled without full funding of the Act.

As a multimodal transportation department, the New York State Department of Transportation is well positioned to implement the new directions set in ISTEA. We already have the planning process in place that involves local officials and transit operators equally with DOT. The Department developed a corporate philosophy

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Hon. Nick J. Rahall, II
Page 2

in 1990 to concentrate on improving mobility, using each mode to carry out the functions it does best. We are working to involve the many new partners in the transportation decision-making process called for in ISTEA. Many have historically been active partners in New York and we welcome other interests. In particular, we are working to improve our partnership with the State's transit operators to provide better transportation solutions that respond to the goals of ISTEA. A major concern is that without adequate funding, these new partnerships are immediately strained.

Transferring highway funds to transit is not a new concept and has been utilized in New York well before the advent of ISTEA. The increased flexibility in the use of federal funds that was provided in ISTEA has already resulted in New York State using over \$200 million of highway funds for transit projects, nearly half the national total of \$436 million transferred to date. This flexibility has not only been implemented in the New York metropolitan area, but throughout the state. Highway funds have been used to buy buses in Saratoga County, implement new transit services in Albany and Dutchess County and build park-and-ride-lots in Buffalo and several other areas. Additional projects around the state are planned for later in the year.

New York State is taking advantage of the numerous additional features and funding programs contained in ISTEA. These include:

- Use of Federal Interstate Maintenance funds for preventive maintenance activities;
- Streamlining Federal procedures for projects off the National Highway System;
- Application and receipt of Timber Bridge Discretionary funds;
- Application for the Congestion Pricing Pilot program;
- Application for High-Speed Rail Grade Crossing elimination funds;
- Application for High-Speed Rail Demonstration funds;
- Creation of a Statewide Transportation Enhancement Program;

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Page 3

- Creation of a State Scenic Byways System;
- Development of the six management systems required by ISTEA;
- Application for Ferry Boat Discretionary funds; and
- Study and implementation of IVHS projects around the state.

The full testimony provides New York State's experience and views on the early results of implementation of ISTEA and also makes some recommendations for Congressional action that should be considered in future revisions to the bill to improve implementation.

Thank you for the opportunity to submit this testimony to the Subcommittee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Norman R. Schneider", written in a cursive style.

NORMAN R. SCHNEIDER
Secretary to the Department

Attachment

**TESTIMONY OF THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION**

The New York State Department of Transportation would like to thank Chairman Rahall and the members of the Subcommittee on Surface Transportation for the opportunity to submit testimony on the implementation of ISTEA. The five oversight hearings scheduled by the subcommittee on various aspects of this wide ranging act should allow Congress to get an early view of both the success states and local governments have had in implementation of the many new features of ISTEA and the difficulties that have been encountered to date. As a multimodal department, we wish to take this opportunity to discuss a number of items related to implementation of the act.

A LOOK BACK

Three years ago this month, NYSDOT testified before this subcommittee on the impending reauthorization of federal surface transportation programs. Although still more than one year away, this subcommittee had the foresight to solicit views from many interested parties on this reauthorization for the post Interstate construction era. New York had a lot at stake, having received an average of \$730 million per year in federal highway funds and about \$500 million in federal transit funds from the 1987 act. These federal funds were vital to New York, as they financed about 50 percent of highway rebuilding program and about one-quarter of the transit capital program. We feared that the retrenchment in federal involvement in transportation signaled by the former administration and the radical shifts to revenue-sharing formulas, based on contributions into the Highway Trust Fund, would both severely impact our ability to rehabilitate our aging transportation infrastructure and also eliminate any national focus for transportation funding programs. We maintained in our testimony that the federal/state/local partnership in financing our nation's multimodal transportation system was critical to success, and that additional resources were necessary to allow states to make progress in reducing deficiencies and abate growing traffic congestion.

Thankfully, this retrenchment did not happen. ISTEA maintained each state's historic share of federal funding and allowed states like New York, that had already invested significantly in its multimodal transportation network, to continue the necessary improvements to keep these heavily utilized facilities in operable condition.

In that 1990 testimony before this committee, we cited several other features that we believed should be included in the reauthorization of surface transportation programs, including:

- Equal consideration of federal transit programs with highway programs;
- Flexibility in the use of federal highway funds;
- Funding completion of the Interstate trade-in program; and,
- Increase in funding for the federal bridge program.

We are happy to say that all these issues were addressed in ISTEA.

The landmark Intermodal Surface Transportation Efficiency Act of 1991 signaled the completion of the Interstate highway construction era and reshaped federal transportation policy and funding programs to more readily address changing national priorities. Among the major new directions set in the act were the emphasis on improving the efficiency of the nation's existing transportation systems; an increase in flexibility in the use of federal funds, both between categories of federal highway programs and for transit projects; an increased emphasis on planning of transportation facilities and an increased role for MPOs in setting local priorities; and, a closer tie for transportation to help achieve the national objectives set the Clean Air Act Amendments. This change in federal policy was intended to lead state and local transportation officials to rethink their approach to planning and programming federally funded highway and transit projects, especially in metropolitan areas with traffic congestion and air quality problems.

PUTTING ISTEA INTO PERSPECTIVE IN NEW YORK STATE

Many policy changes and innovations required or advocated in ISTEA have been in practice in New York State for many years. New York has a long history of balanced investments in both its highway and transit networks. New York State contains nearly one-quarter of the nation's vehicle miles of transit service and one of every three transit riders nationally. Transit providers have been equal and active members of our metropolitan area MPOs since inception. In addition to receiving over \$600 million in federal transit funds from ISTEA, the state supports transit with a \$1.0 billion operating assistance program and provides about \$200 million in state funds for transit capital projects annually. Further, highway bridge and tunnel tolls in New York City provide capital and operating funds to finance the MTA's various transit services.

This past investment and support of transit results in New York State being the second most energy efficient state in the nation, ranking only behind Hawaii. New York's average per capita consumption of gasoline annually is 370 gallons per person, while the average use nationwide is 529 gallons per person. Through these actions, New York State has wholeheartedly embraced the environmental and energy benefits resulting from reducing motor fuel consumption that are embodied in various federal laws. It is these very benefits that caused New York to strongly oppose the allocation of federal transportation funds by formulas related to

each state's gasoline use during the debate over ISTEA.

Earlier this month, our state legislature approved a four year funding program for transportation in New York State, our first ISTEA era long-term multimodal funding program. This program included agreement on the allocation of the state's new dedicated transportation fund, financed by various transportation user fees, and agreement on a regional allocation of federal highway funds. Implicit in this agreement is the implementation of many of the ISTEA's new features, including the use of flexible highway funds for transit projects. Part of this package was a financing plan that fully funds the New York MTA's \$9.6 billion five year capital program. This was achieved through the use of \$670 million of flexible highway funds and assuming full funding of ISTEA transit authorizations for the remainder of the Act.

The remainder of this testimony will describe New York's specific experience in implementation of a number of areas of ISTEA and recommend some changes from our experience that should be considered in future revisions to the law.

FINANCING HIGHWAY AND TRANSIT CAPITAL NEEDS

Federal transportation funding is an important component of New York's overall transportation financing picture. Federal highway aid currently comprises about half of the state's highway construction program. The full funding of highway authorizations in ISTEA would provide New York State with about \$6 billion over the six years of the Act. Much of New York's growth in federal aid from the pre-ISTEA levels comes at the end of the Act. While full funding of ISTEA would provide a significant increase in federal highway aid, these funds, when combined with the state resources, will not meet all currently identified highway rehabilitation and capacity needs.

In the 15 months since ISTEA was enacted, New York has let over one billion dollars of federally financed construction projects. These funds were used for a variety of projects as follows:

- 51% for bridge rehabilitation and replacement
- 30% for pavement rehabilitation and resurfacing
- 4% for preventive maintenance on pavements and bridges
- 3% for safety projects
- 11% for highway mobility and capacity projects
- 1% for other activities

The upcoming five year capital program will continue to emphasize the rehabilitation of existing transportation facilities and anticipates the following types of projects, assuming that full ISTEA authorizations are available:

- 38% for bridge rehabilitation and replacement

- 33% for pavement rehabilitation and resurfacing
- 7% for safety projects
- 20% for mobility and capacity projects
- 2% for other activities

The category of mobility and capacity includes a number of projects that improve mobility through activities such as HOV lanes, park-and-ride-lots, and ridesharing programs. A significant amount of the funds expended for these activities over the next five years are for the construction of HOV lanes on the Cross-Westchester Expressway and Long Island Expressway.

New York has historically used all available highway obligation authority well before the end of the fiscal year and has had to utilize advance construction procedures to avoid interruption in federal-aid project lettings. With the reduction in FFY 1993 obligation authority, and without the increase expected from the President's Economic Stimulus package, New York expects to exhaust its obligation authority in July of this year. As a result, we have already begun to advance fund federal-aid construction projects.

Federal transit assistance is also an important part of operating and improving the state's heavily utilized urban and rural transit systems. In the New York metropolitan area, federal transit funding has financed almost one-third of the MTA's massive rebuilding program. Outside of New York City, federal transit aid typically finances 75-80 percent of capital improvements in suburban areas, upstate cities such as Buffalo and Albany, and rural parts of the state.

Similar to highways, most federal transit aid is used to rehabilitate the existing aging transit infrastructure and to replace buses on a regular cycle. Little capacity expansion has occurred as there has not been sufficient funding to meet vital rehabilitation needs. Underfunding of federal transit authorizations over the past 12 years have contributed greatly to the delay in improving transit facilities and services. This underfunding of federal transit programs places greater pressure on already insufficient highway funding to help meet transit needs. It also does not allow transit to be well positioned to meet increasing demands for multi-occupant commuting that will arise from federal legislation and to combat growing traffic congestion, reduce vehicle emissions, and conserve energy.

We strongly urge this committee to inform Congress of the need for full funding of ISTEA, both highway and transit programs, for the remainder of the Act. Funding either of these programs without the other will not allow states and localities to provide balanced investment in transportation and meet the goals of ISTEA and the CAAA. Lack of full funding will force the states to make the difficult choice of investing in one mode at the expense of vital

rehabilitation of the other.

IMPLEMENTATION OF NEW DIRECTIONS

The new directions set in ISTEA have, in many cases, reinforced New York State DOT's longstanding role as a multimodal transportation agency. To more fully implement the Act, the Department has increased its efforts to focus on improving mobility in planning, designing and implementing transportation projects. The major policy changes contained in ISTEA, and compliance with the still developing rules for new funding programs, has necessarily resulted in some delays in fully implementing all aspects of this new Congressional direction. Time is needed for state and local transportation officials to develop projects under the several new programs contained in the act, and rank transportation priorities.

For example, the new Congestion Mitigation/Air Quality Improvement (CMAQ) Program in ISTEA provides federal funds to air quality non-attainment areas for projects that help lead to attainment. In New York, project selection guidelines were developed to calculate the air quality benefit of proposed projects under this program. The delay in the issuance of federal guidance and the desire to implement transportation projects that truly achieve the intent of this new program has led to some initial delay in programming CMAQ projects, but in the long run, will result in better compliance with new Congressional direction. As the states and local governments develop the necessary new procedures to deal with these new programs and gain experience, we anticipate that the timing of project implementation will improve and produce a better balance of multimodal projects within the state's large metropolitan areas.

STRENGTHENING THE PARTNERSHIP BETWEEN HIGHWAYS AND TRANSIT

Among the new directions set in ISTEA were the increased cooperation expected between transportation providers and the increased public involvement in the transportation planning process. These requirements will, in some cases, bring new actors into the transportation decision making arena. It is incumbent upon all state DOTs to reach out and involve all appropriate parties in transportation decisions.

As a multimodal transportation department since its inception in 1967, NYSDOT has had close working relationships with transit providers. To more fully implement the intent of ISTEA, NYSDOT is strengthening the partnerships with transit providers around the state, with MPOs and with local officials. As part of this role, NYSDOT has several efforts underway that increase the consideration of transit projects within the state's transportation planning and programming process. Transit providers will be involved throughout the Department's transportation planning, development and design stages. This effort was highlighted in a December, 1992 speech by

former DOT Commissioner Franklin White at the Statewide Transit Conference. In that speech, the Commissioner emphasized the importance of improving the partnership between the DOT and the state's transit operators in order to allow New York to fully achieve the objectives of ISTEA.

This cooperation has already led to increased consideration of transit as a solution to transportation problems in many areas of the state, as well as the financing of transit rehabilitation projects with flexible funds. A number of projects are being implemented ranging from the use of flexible highway funds to replace of a small city bus garage in Gloversville to working with a major employer in Rochester to promote multi-occupant vehicle use at its new corporate headquarters. Opportunities such as these will be pursued across the state as we work to fully carry out the spirit of ISTEA.

USE OF FLEXIBLE HIGHWAY FUNDS FOR TRANSIT PROJECTS

Since ISTEA was enacted, FHWA reports that \$436 million of flexible highway funds nationally have been transferred to FTA for transit projects. Of this amount, \$204 million has been in New York State.

Flexible use of federal transportation funds is not a new concept in New York. From 1976 to 1991 under the provisions of the Federal-aid Urban Program, New York obligated over \$160 million of highway funds for transit projects. This was more than three times the amount of any other state that utilized this provision. The amount transferred represented more than 16 percent of the urban program funds provided to New York, while nationally, over this same period, just 2.4 percent of urban system funds were transferred to transit.

New York has committed 60 percent of the federal funds made available from the 1985 trade-in of the West Side highway (Westway) for transit improvements. This represents over \$1.0 billion of the \$1.7 billion total trade-in. Further, the \$1.0 billion 10 year program to improve the four East River bridges meets major rail transit as well as highway needs. Both the Manhattan and Williamsburg bridges carry highways and subway tracks into Manhattan. They will be rehabilitated with federal highway and city funds at no cost to the transit services which rely on these bridges to carry approximately 315,000 subway riders each day. The transit share of the bridge rehabilitation cost could easily be several hundred million dollars.

FFY 1992 - In FFY 1992, the first year of ISTEA, New York State was apportioned \$766 million in federal highway funds within the various new categories contained in the act. Of this amount, \$150 million in highway funds under the Interstate Trade-in highway program, Congestion Mitigation/Air Quality Improvement program and the Surface Transportation Program were transferred to the MTA for

use for essential transit capital projects to meet a shortfall in the MTA's capital plan. This transfer represents nearly 30 percent of the flexible funding available within New York's federal highway program in that year.

Over 84 percent of these transferred highway funds will be committed by the MTA for vital transit projects by the end of this federal fiscal year. Projects undertaken include major subway and bus facility rehabilitation, service expansion, and introduction of new technologies including \$10.6 million to reduce the pollution emitted from transit buses. When completed, these projects will increase ridership by improving capacity and efficiency.

FFY 1993 - Greater use of flexibility throughout the state is expected in FFY 1993. The State and various MPOs have had time to develop projects that incorporate the use of flexibility into upcoming transportation plans and programs.

In the first six months of federal fiscal year 1993 (through March 31, 1993), an additional \$54 million in flexible federal highway funds have been utilized for transit projects. The lack of full funding of the transit authorizations contained in ISTEA has placed increased pressure on the available flexible highway funds as a source for financing transit projects. This use of flexibility includes transfer of \$50 million to the MTA and \$4.4 million in several upstate areas.

Transit projects undertaken with flexible highway funds to date can be categorized as follows:

MTA:	Subway and bus rehabilitation - \$178.7 million
	Capacity expansion - \$8.2 million
	Bus pollution control - \$10.6 million
	Planning/technical studies - \$2.5 million
Upstate:	Bus and equipment replacement - \$1.6 million
	New transit services - \$1.1 million
	Park and ride lots - \$1.5 million
	Studies - \$0.2 million

Several metropolitan areas have taken early advantage of the flexibility in ISTEA. For example, the Capital District has utilized half of its first year of metropolitan STP funds for a transit project, and used a significant portion of CMAQ funds for new transit services and for park and ride lots. Dutchess County has used nearly its entire first year's CMAQ allocation for transit improvements. In New York City, half of the first two years of metropolitan STP funding and 70 percent of CMAQ funding were transferred to the MTA in CY 1992.

Additional transit projects to be financed with flexible highway funds have just been programmed in recently updated TIPs. These

projects will be implemented in the coming months. We expect New York State and its metropolitan areas will continue to make substantial use of the flexibility within ISTEA to transfer highway funds to transit projects in the future. The five year transportation financing plan agreed to by the Governor and State Legislature assumes the transfer of \$670 million of federal highway funds to the MTA by 1997. Additional transit projects will likely be financed with flexible funds around the state.

FOCUSING ON MOBILITY

Traffic congestion presents a rising challenge to both our major cities and rapidly growing suburbs. The delays that result not only affect commuters, but also have a serious hidden impact on our economy, raising the price of delivering goods and services and reducing productivity. This congestion results in wasted time and fuel, costing New Yorkers over \$1 billion a year.

Recognizing the debilitating affect of congestion, Governor Cuomo, in his 1993 State-of-the-State address directed the Department of Transportation to work with the state's transit systems to develop a comprehensive program to improve the mobility of New Yorkers and assist in improving air quality. The program will consider the following:

- Measures to encourage multiple occupant vehicle use;
- Improved intermodal transfers, including park-and-ride lots;
- Improved traffic flow through advanced traffic management systems;
- Implementation of electronic toll collection systems;
- Creation of strong partnerships between highway and transit operators to promote alternatives to driving.

Through these and other efforts to better manage transportation supply and demand, we can improve the use of existing transportation systems, improve air quality and meet the goals of the Clean Air Act and ISTEA.

It should be recognized that in some cases, mobility and congestion problems may only be adequately addressed through increases in highway system capacity. The federally mandated Congestion Management Systems required in metropolitan areas will be the basis for determining the most advantageous transportation solution for a given problem.

In 1990 the Department adopted a corporate goal to improve mobility throughout the state. This goal is intended to focus department programs on improving the movement of people and goods by the appropriate transportation service. Achievement of this mobility goal requires close cooperation with the state's transit systems and will assist New York in meeting the new direction set in ISTEA.

INTELLIGENT VEHICLE/HIGHWAY SYSTEMS

The potential for applying IVHS technology to increase the efficiency of existing highways is enormous. Implementation of comprehensive IVHS in major metropolitan areas can reduce accidents, reduce traffic congestion and improve traffic flow with little adverse environmental effects. Elements of IVHS such as incident management, ramp metering and traffic signal system improvements have been shown to have benefit/cost ratios of from 4:1 to 15:1. As a result, in many cases, they can be a cost-effective alternatives to major capacity expansion.

States are just beginning to scratch the surface of this potential. New York has one of the oldest advanced traffic management systems in operation, the 35 mile INFORM system on Long Island. A 1991 USDOT report evaluating INFORM cited it as the most advanced variable message sign-based motorist information system in the nation. The evaluation revealed the following:

- annual delay savings for incident related effects was estimated at 300,000 hours;
- congestion was reduced 25 percent through ramp metering;
- message signs where no alternative route was recommended resulted in diversion of 5 to 10 percent of mainline traffic while adding information on alternative routes doubled this diversion.

NYSDOT has developed an IVHS Strategic Plan for the New York metropolitan area which calls for the investment of over \$150 million in IVHS activities over the next five years. Implementation of this strategic plan will result in an integrated traffic management system in the metropolitan area. This system will improve the efficiency of travel and reduce congestion on the major highways in the metropolitan area (including an expansion and upgrade of the INFORM system on Long Island), connect to the IVHS planned in New Jersey and complement activities planned for the nationally recognized I-95 corridor. Other applications of IVHS technology are planned in other areas of the state. We urge the committee to continue its support for this important program, and target funding to areas with severe traffic congestion and air-quality problems.

COMPLIANCE WITH THE CLEAN AIR ACT AMENDMENTS

The Clean Air Act Amendments (CAAA) of 1990 will have a profound effect on the transportation systems of the future. This is apparent by the close ties and many references in ISTEA to transportation's role in achieving the goals of the CAAA. New York State has long been an advocate of improving our environment, and believes that each sector that contributes to our nation's environmental problems must assist in the solutions.

While we fully support the objectives embodied in both these bills and are working diligently to implement their provisions, we would like to raise before this committee several concerns related to the role of transportation. There are many deadlines for various requirements in the CAAA, and failure of the states to comply with these requirements will result in the inability to expend federal highway funds for any rehabilitation or construction projects. So far, the federal agencies responsible for issuing guidance to the states to advise states on how to comply with federal law have been extremely late in issuing this critical guidance. However, the states, in turn, have not been given any extension in complying with the legislative deadlines. If appropriate and reasonable extensions or waivers are not given states, and sanctions are imposed as allowed by law, then vital transportation programs could be severely impacted.

Many of the transportation projects undertaken in New York State are for the maintenance and rehabilitation of existing transportation infrastructure. Such projects should be allowed to progress with minimal environmental review if they do not materially alter the function or purpose of the facility.

CONGESTION MITIGATION/AIR QUALITY IMPROVEMENT PROGRAM

The new Congestion Mitigation/Air Quality Improvement Program authorized in ISTEA provides funds to air quality non-attainment areas for projects that improve air quality and help reach attainment. The New York State DOT has wholeheartedly embraced the tenets of this new program and has attempted to develop a program for the use of these funds that will fully meet the goals of this program. Last year, the Department developed guidance and project evaluation criteria to use to prioritize CMAQ projects. Air quality benefits are calculated for each proposed project, along with cost-effectiveness based on the reduction in vehicle-hours of delay or person hours of delay. Projects are then selected for implementation by each MPO.

The NYSDOT is working with each MPO to develop and implement individualized CMAQ evaluation systems. Projects evaluation systems for CMAQ funds should soon be used by MPOs in all appropriate metropolitan areas of the state. Implementation of CMAQ projects will play an important role in improving air quality and will be closely coordinated with development of the State Implementation Plan.

With procedures to evaluate and select CMAQ projects in place, New York will be ready to increase activity in this new program.

An issue related to the CMAQ program which we believe deserves some study is the impact on metropolitan transportation programs in areas that come into air quality compliance. As air quality improves in some metropolitan areas in marginal non-attainment,

these areas will no longer be eligible for CMAQ funding. However, the CAAA requires these areas to have a maintenance plan for 20 years to ensure that these areas stay in attainment. In addition, most of these areas have programmed important projects using CMAQ funds in their long term programs. These projects, therefore, would lose their funding source. In order to ensure that these areas stay in attainment and that the objectives of ISTEA and the CAAA continue to be achieved, it may be appropriate to allow such areas to remain eligible for CMAQ funds for some period of time after they first come into attainment. This would allow important projects to reduce congestion and improve air quality to be implemented.

IMPROVING PROGRAM EFFICIENCY

Preventive Maintenance - As embodied in its title, one major objective of ISTEA is to derive the greatest efficiency from our existing transportation systems. States were given increased flexibility in the use of available federal funds for activities that can improve the efficiency, including the transfer of federal funds between highway categories and an expanded eligibility for some preventive maintenance activities. Preventive maintenance techniques such as pavement armor coating and joint sealing are cost-effective methods to postpone deterioration of highway pavements. New York State is investing about \$200 million in preventive maintenance on our highways and bridges this year, and will continue this vital investment in the future. The ability to use federal funds for preventive maintenance activities will better preserve existing transportation facilities and allow them to remain fully functional throughout their useful life. We encourage the committee to support the increased eligibility of preventive maintenance for federal funding.

Design Standards - ISTEA allows states to request that FHWA no longer review plans, specifications and estimates for projects off the National Highway System and for low cost NHS projects. This provision has worked well in New York over the past year and substantially improved the efficiency of processing projects. Also, ISTEA allows states to use state design standards on federal-aid projects not on the NHS. This has resulted in more consistent and economical project designs on these highways. New York State supports the continuation of these provisions that have worked so well.

In addition, we believe that this committee should consider allowing FHWA to deal directly with large cities that have adequate transportation engineering capacity. Consideration should be given to eliminating state oversight in these situations, which will ease administrative burdens and improve the efficiency of the project approval process.

RECYCLED MATERIALS

Section 1038 of ISTEA requires states to use crumb rubber modified asphalt in 5 percent of its federally-aided highway paving beginning in FFY 1994, increasing to 20 percent by 1997 . New York supports the intent of this section to utilize recyclable materials in highway construction. New York has utilized recycled glass in highway paving for many years, and in FY 1992, 2500 tons of recycled glass was used in highway paving. However, rather than mandating the use of recycled rubber in highway pavement, which currently increases the cost of these paving projects, we support the position taken by AASHTO that any use of recycled rubber in any highway related application should be considered. Use of recycled rubber as an aggregate in highway pavement base courses can be more cost-effective than use in pavement, and can result in much greater utilization of recycled rubber.

PLANNING

One major theme of ISTEA was an increased emphasis on transportation planning. This is evidenced through the inclusion of detailed requirements for preparation of metropolitan transportation plans, a new statewide plan requirement and more than double the federal funding resources devoted to planning activities. In addition, the act emphasizes the role of the MPOs in programming projects.

These were not new activities in New York. We already had efforts underway to prepare or update metropolitan long-range plans and have periodically prepared statewide masterplans for transportation. Our MPOs have, since their inception, consisted of state and local officials as well as transit operators as equal partners. Our MPOs acted on the basis of consensus, thus all parties had to negotiate and approve the use of federal funds in metropolitan area TIPs. The new federal planning provisions in ISTEA reinforced what was already in place in New York.

We are concerned however, about the dates chosen by FHWA for completion of the metropolitan long-range plans. The arbitrary date set by FHWA for completion of the metropolitan long range plan of October 1, 1993, when viewed against other work products required by MPOs, may not allow a plan that fully meets the requirements of ISTEA to be developed. We recommend that the due date for metropolitan plans match the date for completion of the statewide plan of October 1, 1995. States and MPOs should be urged to complete their long range plans sooner if possible, but not penalized if this does not occur.

New York had activities underway prior to passage of ISTEA to develop comprehensive management systems for highway pavements, bridges and traffic congestion. The six management systems required in ISTEA will complement efforts already underway and

provide the state with the tools to better manage its financial resources and prioritize projects. These systems should also be designed to better help states in the decision process in allocating flexible federal funds.

NATIONAL HIGHWAY SYSTEM

The bill requires that FHWA submit a list of highways by December, 1993 to be designated as the 155,000 mile National Highway System. Congress must then approve a system by September 30, 1995. No apportionment of NHS of Interstate Maintenance funds is allowed after that date if Congress has not acted. States will be submitting their recommendations on the NHS to FHWA this later spring.

New York supports the objectives for development of the NHS. New York does not anticipate any major problems at this time in developing a suitable NHS based on FHWA guidance. We urge Congress to act on the NHS before the September 30, 1995 deadline to avoid any loss of federal funds and disruption in capital programs.

TRANSPORTATION ENHANCEMENTS

ISTEA requires each state to use a portion of its Surface Transportation Program funding for Transportation Enhancement activities. These activities consist of a list of 10 specific items contained in statute such as bicycle and pedestrian facilities, landscaping, historic preservation and mitigation of water pollution due to highway runoff.

New York State has implemented many of the activities contained in the transportation enhancement program as part of its regular transportation program. With the set-aside of funds for these activities in ISTEA, more can now be done to better integrate transportation systems with the physical and social environment and provide needed amenities. We have developed a statewide transportation enhancement program to solicit projects from all interested parties. Advisory committees of experts in the various enhancement areas will prioritize project proposals for inclusion in metropolitan and statewide programs. In metropolitan areas, MPOs will have the ultimate responsibility for programming enhancement projects. This program should be underway soon.

SPECIAL PROJECTS

The act authorized over 500 special transportation projects in seven categories. New York State has 32 projects listed in the bill, totalling \$357 million. Funding for each of these projects is allocated over the six years of the act based on percentages contained in law. Because of the need to accumulate sufficient funds over several years to undertake the necessary design or construction activity, many of these projects cannot be undertaken

right away unless states provide advance funding. The inability of states to transfer funds between special projects to match project implementation schedules thus contributes to the slowdown of implementation of these projects.

Some activity related to project design or construction will be underway by the end of this fiscal year on 22 of New York's 32 special projects. These projects encompass \$287 million in federal funds of the \$356 million total authorized for New York State. Most of these projects will be implemented by NYSDOT. Others have been transferred to another agency for implementation. At this time, all but one of these special projects are contained on the Department's five year capital program.

OTHER PROGRAMS

Transfer of Section 16 Transit Funds - ISTEA contains a provision allowing states to transfer any unobligated Section 16(b)(2) elderly and disabled program capital funds to their Section 18 nonurbanized area program or to the Section 9 small urbanized area program, but not until 90 days before the end of the fiscal year in which the funds are appropriated. Both the Section 16(b)(2) and Section 18 programs are administered by the states. Many states such as New York, are coordinating the transit services provided for rural residents and for the disabled. Coordination of these two programs results in more efficient use of federally purchased equipment and better service to customers. This transfer from the Section 16 program should be allowed at any time during the fiscal year to provide states more flexibility in the management of these two programs, allow localities to plan the coordination of services, and speed the approval of local grants. We recommend that the 90 day limitation on this transfer be eliminated in future amendments to ISTEA.

Timber Bridges - New York State has applied for grants under the new Timber Bridge Discretionary Grant Program authorized in ISTEA in each of the first two years. In FFY 1992, we received \$1.4 million out of \$8 million nationally for four timber bridges. In FFY 1993, New York received \$3.4 million out of \$8.5 million for 11 bridges. Nearly all of these bridges are on roads owned by counties. Based on our experience with this program, we have found that the counties have had some difficulty in complying with the short timeframe to obligate these funds. Unlike regular bridge discretionary funds which are granted to states for major bridges that have been under design, timber bridge grants are being used by localities to replace their local bridges. In most cases, because of the lack of funds, the localities have not commenced design on these bridges until they are assured of receiving federal funds for construction. Once they are advised of a federal timber bridge grant, the locality has only until the end of the federal fiscal year to obligate the funds, which cannot be done until design is approved. We recommend that the one year obligation requirement be

increased to two years to allow localities sufficient time to design and obligate these funds.

Uniform Audit Pilot Program - Section 1092 of ISTEA contains a pilot program whereby up to 10 states can choose to audit all federal-aid highway projects using the cost principles contained in Federal acquisition regulations. States participating in this program must accept the indirect cost rates (overhead) established in those federal regulations are precluded from applying any cap or ceiling on these engineering contracts.

While New York State supports the single audit concept contained in this provision, we strongly oppose the prohibition of a state's ability to set maximum guidelines on consultant overhead rates. A number of states, including nearly all northeastern states, use indirect cost guidelines as a method of establishing a reasonable cost for engineering services. Our experience has shown that these guidelines have not reduced the quality of the engineering firms providing services in this state nor the quality of the product they provide. Elimination of the state's ability to set these guidelines on overhead would increase the cost of obtaining consultant engineering services and result in the implementation of fewer vital infrastructure rehabilitation projects. New York State estimates that removal of these maximum rate guidelines would increase consulting costs by about 10 percent, or \$20 million per year. This provision is inconsistent with the intent of ISTEA to utilize scarce federal funds efficiently and should not be mandated on the states, especially at a time when Federal and state funding is already insufficient to meet important transportation needs.

HIGH-SPEED GROUND TRANSPORTATION

ISTEA authorized federal funding for research and implementation of high speed ground transportation under Section 1036. Included under this program is the financing of a \$750 million Maglev prototype development program which will lead to the construction and testing of a revenue service Maglev system in the U.S. New York State has already completed several studies on the potential implementation of a Maglev system in this state. Later this year, New York should have a better understanding of the potential for Maglev in the state and will develop a plan of action.

While we study the potential for the introduction of super-speed Maglev technology in New York, we recognize that we must continue to improve the comprehensive network of intercity passenger rail service now operated. New York's Empire Corridor is nationally recognized as an existing high-speed corridor, the only one in current operation outside the Northeast Corridor. New York State has invested over \$160 million in State funds to improve passenger rail service. Trains currently travel at speed up to 110 MPH between Albany/Schenectady and Poughkeepsie.

Section 1036 also contains an annual authorization of \$5 million for high-speed rail demonstrations. New York has applied for a demonstration grant under the Section 1036 program to implement passenger service at 125 mph in the Empire corridor before the end of the calendar year. With only a small investment to upgrade existing facilities, we have a corridor that can test true high-speed operation.

SUMMARY

The Intermodal Surface Transportation Efficiency Act of 1991 charted a new direction for federal surface transportation programs. Many states, including New York, have attempted to take advantage of the many new features in this legislation and comply with the intent of Congress. With passage just 16 months ago, USDOT, states and localities have not yet been able to fully implement the many new features in this wideranging bill. Some of the more innovative provisions and those that represent a wide departure from past practice will take longer to work through and successfully implement. We ask this committee to recognize this fact in this early review and oversight of the implementation of ISTEA.

New York State has made a conscious attempt to implement the new features of ISTEA as early as possible, and take advantage of the many new federal funding programs contained in the act. As described in our testimony, many of the new directions contained in ISTEA are not new to New York, as they have been in practice in some form for many years. We are working to strengthen our partnership with transit providers, and others involved in transportation decisions, to implement better transportation solutions that respond to the goals of ISTEA and the CAAA. New York has for several years emphasized the goal of improving mobility of our citizens by the most appropriate and efficient means. We are not just a highway building agency, but a multimodal transportation department which has embraced the new directions of ISTEA.

While ISTEA promised a significant increase in federal transportation funding, this promise has not yet been fulfilled through increased Congressional appropriations. This has caused some difficulty in fully implementing several aspects of ISTEA, particularly the use of flexible highway funds for transit projects. This is an especially difficult decision when most transportation funds are being used to rehabilitate existing highway and transit infrastructure, rather than when adding capacity. Despite the overall lack of increased federal highway and transit funding, New York State has chosen to finance transit projects with flexible highway funds and accounts for nearly half this use nationwide.

Among the recommendations contained in our testimony are:

- Full funding of the highway and transit authorizations in ISTEA for the remainder of the Act;
- Patience in reviewing states' implementation of new programs and features to allow states time to become familiar with these new programs;
- Support increased eligibility for preventive maintenance activities;
- Continue strong support for IVHS funding;
- Recognize the delay in federal clean air guidance and provide states with comparable time to meet mandates;
- Allow recycled rubber in any highway application to qualify for the mandated legislated percentage;
- Require FHWA to allow states and MPOs more time to develop ISTEA mandated long-range plans;
- Amend federal transit law to allow states to transfer Section 16(b)(2) funds to Section 18 at any time;
- Amend the Timber Bridge program to allow two years to obligate funds;
- Do not preclude state's ability to set maximum guidelines for consulting engineering overhead expenses as part of any extension of the Uniform Audit Pilot Program.

We hope that this committee will consider New York State's experience in implementing ISTEA, and recommendations for Congressional action that we feel can improve implementation, in developing future surface transportation legislation. We will provide additional insights to the committee as greater experience is gained over time.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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JAMES B. HUNT, JR.
GOVERNOR

P.O. BOX 25201, RALEIGH, N.C. 27611-5201

SAM HUNT
SECRETARY

April 23, 1993

The Honorable Nick Rahall
U.S. House of Representatives
Chairman, Subcommittee on Surface Transportation
Rayburn House Office Building, Suite 2165
Washington, DC 20515

Dear Representative Rahall:

As you continue with your oversight hearings on the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, I would like to take this opportunity to submit comments to be made part of the public record.

Mr. Kenneth S. Broun, Mayor of Chapel Hill, North Carolina, appeared before your Subcommittee on April 20, 1993 to address the difficulties the Metropolitan Planning Organization has experienced with the North Carolina Department of Transportation and the planning provisions of ISTEA.

The North Carolina Department of Transportation has a different interpretation concerning the issues Mr. Broun raised. The Federal Highway Administration offices in Raleigh, Atlanta, and Washington, DC have been extremely helpful in assisting the Department of Transportation in the interpretation and implementation of ISTEA, particularly as it relates to the new planning requirements. The attached comments will further clarify the Department's position on these matters.

Thank you for your consideration in this important matter. If you need further information, please contact me at (919) 733-2520.

With best regards,

Sam Hunt

SH/lg

Attachments

cc: Norman Y. Mineta, U.S. House of Representatives
Tim Valentine, U.S. House of Representatives
Charles Edward Grady, Jr., Member, Board of Transportation
Juanita D. Shearer-Swink, Member, Board of Transportation
Gorman Gilbert, Member, Board of Transportation
Garland B. Garrett, Jr., Deputy Secretary

April 22, 1993
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**NORTH CAROLINA DEPARTMENT of TRANSPORTATION'S
COMMENTS REGARDING the
INTERMODAL SURFACE TRANSPORTATION
EFFICIENCY ACT of 1991**

The State of North Carolina and the Durham-Chapel Hill-Carrboro (DCHC) urban area have different interpretations of items in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) that relate to the Transportation Improvement Program (TIP) process and project selection. One objective of ISTEA is clear; it is imperative that State and local officials work cooperatively and negotiate differences to develop a local TIP and State TIP that are consistent.

North Carolina has enjoyed a cooperative process with the metropolitan cities throughout the State for twenty-five years. We develop a TIP for the State that offers a fair balance for the urban and rural areas of our State. We have a Transportation Improvement Program and TIP process that we are proud of and that has been used nationwide as a model for other states. We have maintained a project completion rate of over 90% for our TIP projects since the mid-seventies. In order to preserve this record it is essential that the areas maintain consistency with their local priorities. The practice of removing projects or extensively changing priorities does not allow for the proper allocation of funding or an efficient use of time that it takes to plan and design a project.

North Carolina sees the local TIP as a two-step process. First, the local area develops a prioritized needs list that is forwarded to the NC DOT at public meetings. The NC Board of Transportation (BOT) then uses this local guidance in conjunction with other municipal and rural need requests from throughout the State to financially constrain (program) projects in the updated State TIP. There is ample opportunity between the public meetings for a highway division and the adoption of a draft State TIP for negotiations between the local area and the local BOT member who serves as a member of the local Transportation Advisory Committee (TAC).

After the draft State TIP, there is a thirty day comment period prior to the adoption of a final State TIP. Following the adoption of the State TIP, the second step of the local TIP process is adoption of the local TIP as a project selection document. We see this process as the most efficient means for providing financial constraint while maintaining the flexibility to address regional and large cost urban projects, such as the widening of I-85 through the Durham-Chapel Hill-Carrboro urban area.

An example of a regional project not supported by the MPO is US 15/501 between Pittsboro and Chapel Hill. This major facility in central North Carolina carries regional traffic and is on North Carolina's proposed National Highway System. This project is

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supported by other entities of government in the surrounding areas such as Chatham County, Pittsboro, Moore County, Lee County, and the Fayetteville urbanized area. We viewed the removal of the

US 15/501 widening project from the DCHC local TIP as an attempt to block a major regional project. Our only recourse was to withhold approval of the local TIP until negotiations could reach an agreement on this project.

NC DOT receives millions of dollars each year in federal transportation funds. The State also matches these funds with revenue from various State taxes (gas, vehicle registration, etc.) and programs transportation projects for the entire State of North Carolina, including the MPO's. The State is divided into seven regions, and funds are allocated to each of these regions based on a formula mandated by the State Legislature, and then to needs within the various highway divisions. The NC DOT holds annual public meetings in each division to obtain local transportation requests and priorities. This information includes a regional candidate project list from each of the seventeen MPO's in North Carolina. The State staff compiles these requests and makes this information available to the NC BOT on projects that are requested to be included in the State TIP.

In order to program projects throughout North Carolina it is not possible to sub-allocate Federal funds to the MPO's. Current guidance from the Federal Highway Administration does not encourage sub-allocation of Federal funds at the TIP stage, because it does not allow for the implementation of regional and statewide projects. Rather, we see ISTEA requiring financial constraint at the long range transportation plan stage, by the MPO in cooperation with the State.

With the release of a draft State TIP the MPO's can develop a local TIP that is fiscally constrained. If there are disagreements concerning projects in the State TIP it is necessary for negotiations to occur between the State and MPO. These negotiations must result in a local TIP and a State TIP that conform to one another. While North Carolina may adopt a State TIP, we understand FHWA will not approve projects in the State TIP until it conforms to the local TIP. While there were difficulties reaching an agreement on the TIP for fiscal year 1993, upper level management in NC DOT has been readily available to meet with the local area to negotiate differences in the TIP. In addition to the regular meeting held for MPO process, two meetings were held between NC DOT and the MPO with the sole intent of reaching an agreement on the local and State TIP's.

Due to shortfalls in State transportation funds, and a need to match increased Federal funds, NC DOT proposed to use the four MPO's (population over 200,000) specially designated Surface Transportation Program (STP) funds to maintain project schedules in the TIP for fiscal years 92-96. These are projects that were requested by, and supported by the local areas within the MPO prior to ISTEA.

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As a result of negotiations between the State and the Durham-Chapel Hill-Carrboro urban area, the urban area chose to delay the construction of a project for a year in order to use their STP

funds for other projects. In addition to delaying a project, there was an understanding that their designated STP funds would be obligated to the previously programed projects until fiscal year 97. The Department has clearly indicated to the MPO they may withdraw their designated STP funds from the assigned projects; such actions, however, would cause delays in implementing these projects due to the currently fiscally constrained TIP. NC DOT provided assistance in developing cost estimates at the DCHC urban area's request. This included estimates for additional bicycle and pedestrian facilities, as well as, landscaping on currently programed projects.

In future years, the Department will continue responding to the local area's priorities as submitted to the NC Board of Transportation by the MPO. The Department has indicated that in future years efforts will be made to allocate the specially designated STP funds to projects requested by the MPO. These projects should be designated in the local area's candidate project list and submitted at the State TIP public meetings. The Department understands the lead role by the MPO in allocating designated STP funds.

The State of North Carolina, including the Department of Transportation, supports the DCHC urban area's promotion of alternative modes of transportation. It is imperative, however, that we continue to respond to the area's actual travel demands. There are currently over 3.2 million trips occurring per day in the DCHC urban area. Alternate modes account for less than two percent of these trips. Given the current land use in the area, and the travel tendencies of the public it is essential to maintain an adequate highway network while promoting alternative to the single occupant vehicle.

North Carolina's current policy concerning pedestrians and sidewalks prohibits the Department from constructing pedestrian facilities, except when replacing sidewalks along widening projects. A committee has studied this policy and will make a recommendation to the NC Board of Transportation in June, 1993. Representatives from the urbanized areas, including the DCHC urban area, were represented on the pedestrian committee providing the MPO's perspective on this issue.

North Carolina is committed to the transportation needs of our State. NC DOT is convinced that by adhering to the current State TIP process, the Department is better able to serve the entire State of North Carolina. This includes rural, and small urban areas as well as urbanized areas. The current method of programming projects and allocating funds by division allows the State to program large, expensive urban projects as well as major projects of regional or statewide importance. Dividing funds by urban area or county would unnecessarily hamper programming these major projects around the State. There has been no indication

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from other areas in North Carolina that the Department is not implementing the intent of the ISTEA legislation. Our intent is to work with FTA, FHWA, and the local areas to fulfill North Carolina's transportation needs within ISTEA legislation.

IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 [ISTEA]

(Highway Issues)

WEDNESDAY, APRIL 21, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in Room 2247, Rayburn House Office Building, Hon. Nick J. Rahall II (chairman of the subcommittee) presiding.

Mr. RAHALL. The Subcommittee on Surface Transportation will come to order. The Subcommittee on Surface Transportation is meeting today to continue its oversight of the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

Yesterday, we received some very interesting testimony from State and local officials, and in particular we gained some perspective in the progress that the metropolitan planning organizations are making in coming into compliance with ISTEA planning requirements. Today, we will continue this dialogue and focus to a greater extent on issues relating to the Federal aid highways program.

Before proceeding with the list of witnesses, I will recognize the Ranking Minority Member, the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman.

Yesterday, along with the National Highway System, the primary focus of our hearing was transportation planning and the new relationship between Metropolitan Planning Organizations and the States. The hearing today will continue to focus on these issues, but we will also hear from a broad range of highway interests, both public and private, on many other issues and concerns that have become apparent during implementation of ISTEA.

I often think that those of us here in Congress have the easy job of writing legislation, while most of the witnesses we will hear from today have the hard task of actually trying to make it work in one way or another. So their testimony will be of great benefit to us.

Let me take a brief moment to bring up one ISTEA program that has been of real concern to my State of Wisconsin—and I know some other States as well and that is the minimum utilization requirements for asphalt pavement containing recycled rubber. Sec-

tion 1038 of ISTEA mandates that in 1994, 5 percent of all asphalt pavement laid in the State, financed with Federal funds, must contain recycled rubber.

By 1997, this increases to 20 percent. If the State does not meet these requirements, it is in jeopardy of losing Federal highway funds.

Now, this section may have good environmental intentions, and it is supported by those who believe that the use of recycled rubber improves performance; but that is not universally accepted, and some feel the increase in performance, if any, is not worth the additional cost.

Beyond these questions, the State of Wisconsin will not have a tire stockpile problem in the future. Back in 1988, long before ISTEA, Wisconsin passed a waste tire law which directed the Department of Natural Resources to clean up existing stockpiles by 1995 and bans them thereafter. And so over the years, other uses have been found for scrap tires, such as paper mills burning tires to provide a clean fuel source.

By 1995, Wisconsin can use all tires generated annually in both Wisconsin and Minnesota. We would have to import tires from other States at an increased cost to meet the ISTEA mandate.

Wisconsin has applied for a reduction to zero of these requirements, and I know many other States in the Midwest may also apply for reductions, so I look forward to talking to the Federal Highway officials regarding this issue.

I don't want to belabor the point, Mr. Chairman, but I think it is an illustration of a program based on good intentions but which, in the real world, may be of questionable value in some respects.

I would conclude by welcoming our witnesses today, Mayor Dinkins, representatives from Federal Highways and various State transportation departments and many other witnesses we have here this morning. I am sure their testimony will be of great benefit to the subcommittee.

And I would like to ask unanimous consent that an opening statement from the Ranking Republican of the full committee, Bud Shuster, be included in the record. Thank you.

Mr. RAHALL. Without objection, that statement will appear in the record; and all statements of Members desiring to submit them will be put in the record without objection.

[The statement of Mr. Shuster follows:]

OPENING STATEMENT OF HON. BUD SHUSTER

Thank you, Mr. Chairman.

This second day of hearings to review implementation of the ISTEA is most important. We will hear from the Federal Highway Administration and the American Association of State Highway and Transportation Officials, two major players in the Federal-State partnership that has made our national highway program such a success.

I look forward to hearing their report on the progress of the National Highway System.

I particularly want to note that Howard Yerusolim, Secretary of Transportation for the Commonwealth of Pennsylvania, is with us today.

Secretary Yerusolim was extremely helpful during the process of drafting the ISTEA legislation and his comments on its implementation will be most valuable.

I hope my colleagues will join me in welcoming Secretary Yerusolim.

Mr. RAHALL. Let me say to the gentleman from Wisconsin he raises a valid point and I think it is worthy of further consideration, serious consideration, by the subcommittee in our deliberations.

Do other Members wish to make opening comments?

Mr. EMERSON. Mr. Chairman?

Mr. RAHALL. Yes, the gentleman from Missouri.

Mr. EMERSON. I would like to make a brief statement.

I want to thank you and the Ranking Republican for holding these very important hearings. Both of you worked very hard for the passage of the Intermodal Surface Transportation Efficiency Act of 1991, and I really commend you for following up to see what progress has been made since that time.

For my part, ISTEA is the finest piece of domestic legislation I have had the privilege of working on since I came to Congress. I really mean that. This committee labored many hours in crafting a bill that would rebuild our Nation's highways and bridges, give unprecedented flexibility to States in using Federal funds, and just as important, put people back to work. In fact, since this bill was implemented, the estimate is that about 7,000 jobs have been created throughout my home State of Missouri. Construction crews are working, rights of ways and easements are being purchased and pavement is being poured.

Nevertheless, Mr. Chairman, as you are fully aware, one of the problems we have run into since this landmark legislation was signed into law has occurred during the appropriations process. Simply put, funding for ISTEA has been less than at the fully authorized levels. We put together one of the most comprehensive transportation billings ever passed, but we cannot get the needed funds for the States as originally approved in the authorization bill.

My home State of Missouri took Congress at its word, based on the funding levels set in ISTEA, and I and many other politicians in Missouri went out on a limb and urged our legislature to pass a 6-cent motor fuel tax increase, which was predicated on matching an increased Federal program. And the legislature saw fit to do that, and Missouri is poised and ready to take full advantage of what we laid out there for the States to be able to take advantage of.

Missouri has also developed a comprehensive 15-year plan outlining the State's projects over the long run, and funding losses compromise our ability to keep our end of the bargain in undertaking these projects.

So again, Mr. Chairman, thank you for holding these hearings and providing us with the opportunity to bring ourselves and the country up to date on exactly where we are. Thank you.

Mr. RAHALL. The Chair thanks the gentleman from Missouri.

Do any further Members desire recognition? Yes.

Mr. BAKER. Thank you very much. I would like to echo the statements made this morning. I was one of four authors of 108 and 111, the \$20 billion spending bill in California for rail and roads, which included a 9-cent gas tax increase.

I would like for our staff to provide the new Members here with a list of caveats in ISTEA, similar to the rubber requirement which

would prevent our States from accessing this money, so that we can discuss those one at a time.

Yesterday's testimony, even though it wasn't specific, as you had requested, they seemed to emphasize the fact that we left the word "efficiency" out in the ISTEA; the "E" is efficiency, and I think we ought to struggle, as we reconstitute this, to simplify that and make sure that, as we say, if we want rubber in the road, that we go ahead and reaffirm that, yes, that was a good decision and the States should do that; or, no, that is a dumb idea, we are burning those now to make energy.

So if we could review those, Mr. Chairman, for those new Members here that are not familiar with the caveats, I would certainly appreciate it. Thank you again for holding these hearings.

Mr. RAHALL. The gentleman from California Mr. Baker's suggestion is worthy of consideration. I might just modify one word you said, "reconstitute." I don't think it is our desire to reconstitute ISTEA in any manner, but rather to look at these issues and stretch these caveats, as you have requested, so that we can see the bill is implemented as we passed it. And if there are problems, technical corrections, whatever, that may become necessary along the way, those will certainly be taken into consideration.

Mr. BAKER. I concur, Mr. Chairman, and I didn't mean to use the word "reconstitute"; but I am hoping we will fully fund it, which will be a major departure from what has happened.

I will push for full funding, so that if we are to put more money in, let's make sure we are using the word "efficiency" correctly and review these caveats. Thank you,

The Chairman.

Mr. RAHALL. Thank you. Does the gentleman from Pennsylvania, Mr. Clinger, wish recognition?

Mr. CLINGER. No, thank you.

Mr. RAHALL. Do any further Members desire recognition? If not, we will proceed with the witness list.

It is my understanding Mayor Dinkins will not be here until noon today, so we will proceed with Mr. E. Dean Carlson, who is the Executive Director of the Federal Highway Administration.

Mr. Carlson, the subcommittee has a copy of your complete statement—as well as all witnesses' today—and without objection, all testimony will be made a part of the record, as if actually read; and witnesses may proceed as they desire.

Mr. Carlson.

TESTIMONY OF E. DEAN CARLSON, EXECUTIVE DIRECTOR, FEDERAL HIGHWAY ADMINISTRATION

Mr. CARLSON. Thank you, Mr. Chairman. I welcome this opportunity to talk with the committee about implementation of ISTEA.

ISTEA has been called landmark legislation, and I fully agree. We are working very hard in the Federal Highway Administration to support both the policies presented by ISTEA and the philosophy inherent in ISTEA, as well as the more specific prescriptions.

To achieve the best use of the new and broader opportunities, I am pleased that the President has announced his intention to nominate Rodney Slater of Arkansas as the new Federal Highway Administrator. I have had the privilege of working with him for the

last two weeks. He is the Chairman of the Arkansas Highway Commission, so he is not a stranger to this business; I find that he has a very positive view about the program, and I am really looking forward to working with him.

Also, the President and Secretary Peña plan to appoint Jane Garvey of Massachusetts as Deputy Administrator. I had the privilege of working with her on the Central Artery Third Harbor Tunnel Project in Massachusetts when she was the Director of the Department of Public Works. I am very pleased with the leadership team that has been put in charge of Federal highways, subject to the normal concurrences.

I have with me a copy of a booklet that we have given wide distribution; it is FHWA Stewardship 1992: Putting ISTEA into Motion. We have copies of it available. It highlights the implementation that we have generated under this bill. The ISTEA definitely establishes a new way for all levels of government and many other partners to work together to provide transportation services for the country. It provides an expanded role for local governments working through MPOs, however this has been somewhat of a problem for some areas.

Some local officials have really taken to this new activity, and others have indicated that they would like to have more information to assist them in working with the State and with us.

We have been working very hard at outreach so that people know what is actually in this bill. We have accomplished much of the implementation of the ISTEA by memorandum, but we have also issued several publications on different parts of the bill that we felt were complex enough to require special emphasis. We have also created a Federal Highway Administration Electronic Bulletin Board where all the implementation guidance can be found.

To illustrate the importance of being able to get this information out, our calls to the Bulletin Board doubled from 2,500 calls a week to 5,000 calls after we were able to put the implementation guidance up on the bulletin board.

I would like to turn now to the economic stimulus package that President Clinton has proposed. We are ready to implement the economic stimulus package as far as it relates to the highway program. Highway construction is a significant element of this economic program, and on Friday President Clinton renewed his commitment to the highway funding levels included in the stimulus bill. Therefore, we are pleased by your approval of H.R. 1335, which increases the obligation limitation by \$2.976 billion from \$15.327 to \$18.303 billion.

Under your bill, this increase would be available for 90 days and, we feel, would give the economy a boost, a little jump-start and would reduce unemployment.

We would certainly like to see passage soon, because a delay in passage would hurt many northern States with short construction seasons, considering the time it takes to get projects let and awarded to contract and then have construction begin.

We are also pleased that the 1994 budget proposed by the administration provides full funding for the Federal-aid highway program. The obligation limitation for 1994 would be \$18.398 billion

or \$2.7 billion more than the baseline estimate. That is above the pre-stimulus 1993 enacted budget plus inflation.

The total program, including exempt programs, would be \$20.5 billion. In order to fund that level of program without running into Byrd Amendment problems, the budget does propose the extension and transfer to the Highway Trust Fund of 2.5 cents that currently goes for deficit reduction. This would be done with 2 cents going into the highway account and half a cent going into the mass transit account. Without additional funds, we project the Byrd Amendment would trigger a reduction in apportionments in early fiscal year 1995.

ISTEA has a companion act, the 1990 Clean Air Act Amendments, and the two acts together call for significant changes in meeting transportation and air quality goals. ISTEA provides capital improvements to complement the Clean Air Act with funding for environmentally sound transportation projects. The congestion mitigation and air quality category of funds provides flexibility to meet those air quality goals in nonattainment areas.

Sanction processes will be started by EPA if the States are late in submitting air quality plans, so we have been working with the EPA on conformity determinations so that those sanctions can be avoided. We are hopeful this will be the case.

ISTEA continues the Federal Government's commitment to highway safety, and I am very proud and pleased to report that the 1992 fatality rate of 1.8 deaths per 100 million vehicle miles is the lowest we have ever experienced in this country, and it is probably lower than almost any other country in the world. Motor carrier safety activities, enhanced by the commercial driver's license program, stricter enforcement of drug and alcohol regulations, certainly an enhanced motor carrier safety assistance program, and the elimination of railroad crossings and so forth, have contributed to this excellent safety record.

IVHS is an important part of the ISTEA legislation and the President's Rebuild America initiative would increase funding over that already provided in the ISTEA from \$70 million per year in 1994 to \$100 million in fiscal year 1998. These additional funds would also give us an opportunity to convert some of the technology that we have developed in the defense industry to support the new IVHS network. We are looking forward to working on these initiatives.

The Rebuild America program will also allow us to fund a prototype automated highway system providing automatic vehicle control. We think if that were done, we could increase the capacity of many present-day facilities by two times or more.

The ISTEA is a very complex piece of legislation, and we have worked very hard to implement it, along with the ideas that are contained in it, with the States' help. The FHWA will continue to work very hard to see that this bill is carried out.

And that is my statement, Mr. Chairman.

Mr. RAHALL. Thank you very much, Mr. Carlson. Yesterday we heard testimony from the Highway Users Federation that a number of the States may fail to meet the deadline by the end of this month for submitting to FHWA their proposed mileage in the National Highway System. Can you update us on that?

You seem to indicate in your testimony that that would not hamper your ability to submit to Congress, as required by ISTEA, by the end of this year, a proposed—

Mr. CARLSON. We intend to meet the December 18 deadline for submission of the National Highway System to Congress. Some States have not completed their functional classification study and some have indicated a plan to be a little late.

But I have to say that we could not review 52 national functional classification plans or National Highway System maps all at the same time, so we are working with the States trying to resolve the issues as we go. I am confident that we are going to meet the deadline of December 18th, 1993.

Mr. RAHALL. Great. Let me ask you about full ISTEA funding, as you mentioned in your testimony. That is premised upon the fact that the 2.5-cent extension of the motor fuel tax currently going into deficit reduction will be transferred into the Highway Trust Fund. Obviously, we are extremely pleased with this, both the subcommittee and the full committee. I know that our full committee Chairman, Norm Mineta, pushed hard for this proposed extension and dedicating the extension to the highway and mass transit accounts, as you are recommending.

Do you believe that enactment of this proposal in and of itself will enable us to avoid Byrd Amendment implications and problems over the ISTEA authorization period?

Mr. CARLSON. Yes, sir. Based on the present estimates of revenue, we will be able to finish the six-year period of the ISTEA with both a cash balance and without invoking the Byrd Amendment.

Mr. RAHALL. Now, we have heard a lot about the Btu proposals, and I know it is not locked in concrete and it is not a solid target yet since nothing has been passed by the Congress. However, have you been crunching any numbers as far as the effect the Btu tax may have on Highway Trust Fund revenues?

Mr. CARLSON. I don't believe that FHWA has done any particular analysis on the Btu tax. I believe the Treasury Department and OMB have, and I don't think it has a very significant impact on the HTF.

The only thing I would mention is that the demand for fuel in this country, for automobiles and other vehicles, is pretty inelastic. We found this out as a result of other crises that we have had. Where the cost of fuel has gone up substantially there has not been a commensurate reduction in driving.

Mr. RAHALL. Yesterday, we also heard concerns from a number of witnesses that the various deadlines that the Department has imposed on metropolitan planning organizations, and to some extent the States, for coming into compliance with the provisions of ISTEA are too stringent. As you are aware, with the exception of the sanctions for those States which have not begun implementation of the six management systems, ISTEA does not contain any planning requirement deadlines. They have all been promulgated administratively.

Is any active consideration being given to revising any of the planning deadlines?

Mr. CARLSON. There are some provisions in the legislation, either in the Clean Air Act or ISTEA, that do give us dates, such as publi-

cation of the conformity regulations. I believe we have a bit of a problem on that issue because we have an awful lot of people looking at what we have done with the metropolitan planning regulations and statewide planning regulations as something that they wanted to have done promptly before putting out the money under ISTEA in metropolitan areas.

So we have had a couple of lawsuits. I can't give you an exact count, but we have a lot of people on the other side that absolutely do not want us to extend those deadlines.

We believe that we must give the States and the municipalities adequate time to comment on the proposed regulations. Then we hope that we will be able to go ahead and promulgate them in accord with our current schedule.

Mr. RAHALL. What type of progress do you see among the States in developing the required management systems?

Mr. CARLSON. The management systems are a little different than the metropolitan planning regulations. The management systems that I would say that are program or project oriented, such as bridge and pavement management, will not be a problem.

Some of those that I would call more policy- or process-oriented are probably going to give us a little bit of trouble. We may end up, as we get comments on those, looking at them with a view toward whether we are in a position to go ahead on the schedule that we have originally proposed.

We do have the legislative schedule on when sanctions might apply, if States don't have those. So we are driven a bit by that.

We know that there is some concern on the part of the States about the data requirements and the time frames. We are going to try to work with the States and get the regulations out as quickly as we can while maintaining good, rational rules.

Mr. RAHALL. Okay, thank you. The gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. I would like to ask a few questions about Section 1038, which requires States to use certain amounts of asphalt containing recycled rubber or lose highway funds.

Could you tell us the status of the joint EPA-Department of Transportation report on health and environmental impacts, whether asphalt-containing rubber can be recycled, and the performance of asphalt rubber? Will it be submitted by the June 18th, 1993 deadline?

Mr. CARLSON. We have received draft information from the Western Research Institute on the issue. Hopefully, we will be able to finalize that and put out the report that is required by June 18th.

The way the legislation is written has given us some problems because some States have requested exemptions on the basis of unavailability of scrap tires. If the unavailability is due to other uses of the tires that a State doesn't have any control over, that would be an acceptable determination. But we have only had, I believe, three formal inquiries which were based on a lack of availability of the tires.

The problem with the studies so far is that they are inconclusive on the health aspects of recycled rubber asphalt. We really don't have that much data. There is nothing in the reports that we have

studied to date that would indicate a strong enough reason for us not to go ahead. The way the legislation is written, unless there is a definite finding that there may be health related problems, we must go ahead.

Mr. PETRI. Well, if the study is not finished and generally accepted by transportation and construction interests, you feel you should go ahead rather than delay the 1994 requirement for crumb rubber use by the States; is that right?

Mr. CARLSON. In all honesty, Phase I will not give us a definitive answer on the question of the health issues.

As far as the reliability of the product, I think that Arizona and California have pretty good experience with it. To my knowledge, possibly Canada has done some recycling of crumb rubber asphalt, but there has not been much recycling of the product done.

If you look at this, it is not a rubber product, it is a polymer product. And when you heat this product, it does not give off the same stack emission as from a normal asphalt plant. So we are concerned about where this is going to go.

We will be considering the information from the EPA and from our Western Research Institute before we make a decision on going forward with it.

Mr. PETRI. So are you and EPA doing independent research of your own, then?

Mr. CARLSON. No, the legislation basically has a two-phase research effort. The first phase is to look at all the information that exists and see if further research is needed. In fact, it more or less says we are not to start special Federal research in deciding whether to do this. The strong guidance from the Congress, and particularly the Senate, I believe is that we should move ahead with this absent specific reason not to.

Mr. PETRI. As part of your collection of data or studies, are you doing any cost benefit analysis of the use of this material?

Mr. CARLSON. Congressman Petri, the use of cost benefit is not included in the legislation, but the American Association of State Highway Transportation Officials has done some work on this. They have found that the paving costs of typical projects, based upon a project size of about 12,000 tons of asphalt, is \$352,000 for hot mix asphalt, \$529,000 for nonpatented crumb rubber processes, and \$699,000 for patented crumb rubber processes.

I don't think that I could say absolutely that these are definitive numbers. There may not be agreement on the numbers, but it seems that it is pretty obvious that crumb rubber is going to be more expensive than regular hot-mix asphalt.

Mr. PETRI. Wisconsin has experimented with it on several occasions and has found either no improvement in the actual paving and life cycle, or in fact, with the weather conditions in the northern area, that it is much less effective; and so we found alternative use for this material.

We don't have scrap tires. We are recycling them or reusing them, and why we should be required to put rubber in roads when we have found another use for it, and when it makes our roads worse is, frankly, beyond me. Although I understand there are good intentions involved, it seems to me we should not intrude at this point.

Do you think it would make sense at all to allow us to use this material, if we have to use it, in road banks or retaining walls instead of on the actual paving surface, where it is counterproductive?

Mr. CARLSON. There are a lot of uses for scrap tires that I think make a lot of sense. Certainly lightweight embankment is one. For retaining walls, possibly, although beauty is in the eye of the beholder, and I would be a little reluctant to strongly recommend scrap tires for retaining walls that are visible to the traveling public. Those that are in fills may be a different issue.

Also, there is a lot of use of scrap tires as a fuel source; and to the extent that those kinds of uses are available, I certainly think we ought to take advantage of them. But unless a State has no available tires, we really don't have the flexibility under the legislation to exempt a State from the requirement to use tires in hot-mix asphalt.

Mr. PETRI. Would DOT support a revision of the requirements to allow its use in retaining walls or shoulder stabilization or other nonsurface uses?

Mr. CARLSON. I think DOT would certainly be willing to consider it, and I suspect they might be supportive because of the cost of using scrap tires under the current provision.

Mr. PETRI. As I mentioned, Wisconsin—and I think a number of other States may be thinking of this—has applied for a reduction in the requirements, since we will not have a scrap tire problem. Do you agree this is the type of situation that was contemplated in the Individual State reduction provisions found in Section 1038(d)(7)?

Mr. CARLSON. The issue of availability is more of a two-part test. First, you have to decide if you have tires available and then, if you have tires available, it is required essentially that they be used in asphalt. So if a State does not have any tires available, then we would be in a position to possibly grant that State relief from the percentage in the asphalt requirement starting in 1994.

Mr. PETRI. So if all the tires that are no longer used on vehicles are in fact used for other purposes and not discarded, it is your interpretation that there would be no tires available; is that correct?

Mr. CARLSON. If they are used for highway purposes other than paving, in which the highway agency buys them to put into some other process, then I don't think that meets the test. If they are used as a fuel source and there are no tires available, yes, it does meet the test. And it looks to us like at least one of the States that has made a formal request is in the position of really not having any tires available because they are using their supply of tires as a fuel source.

Mr. PETRI. Thank you.

Mr. RAHALL. In line with the gentleman from Wisconsin's questions, I think it would be appropriate at this point, without objection, to submit for the record a number of communications that the subcommittee has received on this issue.

And to summarize them, I will say that those in defense of the scrap tire rubber provision of ISTEA are the following:

The rubber pavement association of Washington, DC, by letter dated April 7, 1993;

FNF Construction Company of Tempe, Arizona, by letter dated April 7, 1993; and

The International Referral Services of Trappe, Maryland, by letter dated March 31, 1993.

Expressing concern over this provision of ISTEA are the following:

The National Asphalt Pavement Association of Lanham, Maryland, by letter dated April 16, 1993; and

Reeves Construction Company of Americus, Georgia, by letter dated April 1, 1993.

So, without objection, I would ask that these communications to the subcommittee be made a part of the record at this point.

[The communications referred to follow:]



RUBBER PAVEMENTS ASSOCIATION

*Dedicated to encouraging greater usage of high quality, cost effective
asphalt pavements containing recycled tire rubber.*

April 7, 1993

The Honorable Nick J. Rahall II
2269 Rayburn House Office Bldg
Washington, DC 20515-4803

Dear Representative Rahall II:

I am writing to introduce you to the Rubber Pavements Association which has been formed, in part, to keep policy-makers informed of various technologies which will help improve the performance and durability of our nation's asphalt pavement and, at the same time, recycle hundreds of millions of scrap tires. I also want to respond to misleading information being provided many Members of Congress by representatives of the conventional asphalt paving industry.

The Rubber Pavements Association is an organization comprised primarily of companies which use ground rubber from scrap tires to enhance asphalt pavement and companies which grind rubber from scrap tires. Our organization shares information on and promotes the use of asphalt pavements containing recycled tire rubber.

There are a variety of technologies through which recycled tire rubber is used to enhance the performance and durability of asphalt pavements. These technologies have been in use for more than twenty years in the United States. Since removal from the Federal Highway Administration's experimental status in 1990, these processes have been increasingly accepted by states for widespread use. Emissions, performance and recyclability aspects of these technologies have been subjected to substantial research. Conclusions of that research show that these products are durable, safe and recyclable.

In Section 1038 of ISTEA (P.L. 102-240), Congress encourages greater use of these technologies by establishing for states a minimum utilization requirement. This requirement is based on a percentage of each state's annual tonnage of asphalt pavement funded by the Federal Highway Trust Fund: 5% in 1994, 10% in 1995, 15% in 1996 and 20% in 1997. Under Section 1038, the U.S. Environmental Protection Agency (USEPA) and the Federal Highway Administration (FHWA) must collect data and conduct studies on asphalt pavements containing recycled tire rubber to confirm that there exist no negative performance, emissions or recyclability characteristics of these products.

Representative Nick J. Rahall II

April 7, 1993

Page Two

With the approval of the Secretary of Transportation and the Administrator of the Environmental Protection Agency, the minimum utilization requirement will be implemented beginning in 1994 unless substantial negative performance, emissions or recyclability characteristics of these products are evident. Such negative characteristics of these products do not exist based on evidence accumulated during the past twenty years.

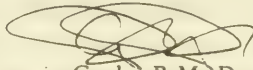
These products have been used in nearly all states and, in some states, are used routinely with substantially reduced lift thicknesses (up to one half) relative to conventional pavement. Because asphalt pavements containing recycled tire rubber can last up to twice as long as conventional pavements, these products are generally less expensive when calculating pavement life-cycle cost.

Some representatives of the conventional asphalt paving industry and certain state transportation officials are resisting Federal encouragement to use these products despite these positive characteristics. Representatives of the conventional asphalt paving industry have contacted Members of Congress requesting that Section 1038 be legislatively adjusted based on cost and worker health safety concerns. These requests for relief are unjustified.

The Rubber Pavements Association would be pleased to provide you and your staff with all available information on these technologies. If you have been contacted by representatives of the conventional paving industry, please know that there is "another side" to this issue.

Enclosed is a one page position paper outlining the key issues relating to Section 1038 of ISTEA. Our Association would be pleased to inform you in more detail about the benefits these technologies have to offer. Please contact us if we can assist in any way.

Best Regards,



Gordon P. MacDougall

Nick -

enc.

*Charlie Miller, West Virginia Sec. of Transportation
supports using asphalt pavements containing recycled
rubber. I hope we can count on your support.*





RUBBER PAVEMENTS ASSOCIATION

*Dedicated to encouraging greater usage of high quality, cost effective
asphalt pavements containing recycled tire rubber.*

MAINTAIN SECTION 1038 OF ISTEA

- Section 1038 of P.L. 102-240, the 1991 Intermodal Surface Transportation and Efficiency Act (ISTEA), encourages states to use asphalt pavements containing recycled rubber from scrap tires.
- Recycled ground rubber from scrap tires has been used to modify and enhance asphalt pavements for over twenty years. Various technological processes are used to incorporate ground rubber from scrap tires into asphalt pavement. Generally, these processes improve the performance and durability of the pavement. (In California, pavement design guidelines allow reduced pavement lift thickness--up to one half--when asphalt pavement with recycled rubber is used in place of conventional asphalt pavement.)
- Section 1038 requires the USEPA and the FHWA to assemble data and conduct research on the performance, the effects on health and the environment, and the recyclability of asphalt pavements containing recycled rubber. The results of these studies will be reported to Congress along with a detailed analysis of the economic savings, the technical performance qualities and the environmental benefits of using recycled rubber in asphalt paving materials. The Secretary of the Department of Transportation and the Administrator of the USEPA will decide during 1993 whether to implement a state minimum utilization requirement.
- The state minimum utilization requirement is calculated as a percentage of tons of asphalt pavement used by each state and financed with Federal funds (5% in 1994, 10% in 1995, 15% in 1996, 20% in 1997). States must meet the requirement, be granted a waiver based on lack of available scrap tires, or forfeit funds which would otherwise be used to meet the requirement.
- Many states, including Alaska, Arizona, California, Florida, Kansas, Montana, North Carolina and Texas, are routinely using these processes and are expected to meet the minimum utilization requirement. Some states are resisting the requirement.
- The National Asphalt Pavement Association (NAPA) has expressed unsubstantiated concerns about worker health safety associated with use of asphalt pavement containing recycled tire rubber. Many in the conventional asphalt paving industry are actively resisting use of these proven processes and are contacting Members of Congress requesting that Section 1038 be modified.
- Section 1038 is an innovative statute which, if fully implemented, will improve the quality of our nation's roads and will help recycle ground rubber from 70 million scrap tires into asphalt pavements. Section 1038 should be maintained.

FNF CONSTRUCTION, INC.

(602) 784-2910
(602) 829-8607 - Fax

April 7, 1993

93 APR 12 AM 9:37

Rep. Nick Joe Rahall, II
HOUSE OF REPRESENTATIVES
2269 Rayburn Building
Washington, DC 20515

Re: Asphalt-Rubber Usage

Dear Rep. Rahall:

Now that all highway contractors are able to use asphalt-rubber paving materials, the provisions of Section 1038 of the Intermodal Surface Transportation Efficiency Act of 1991 have taken on much greater importance. Our company is a prime example of how highway users will benefit from the increased application of recycled rubber in new paving projects.

FNF Construction is a major highway paving contractor in the Southwest, licensed and active in Arizona, California, New Mexico, Nevada, and Utah. Our company is a member of the National Asphalt Paving Association, the Associated General Contractors, and the newly formed Rubber Pavement Association. We are experienced in the application of asphalt-rubber, having worked with the process' patent holders for years. FNF is convinced of the many benefits that can be derived by using this blend of conventional asphalt and crumb rubber from scrap tires. The blend is used as a binder in hot mixes or spray applications and has met with great success for years.

With the expiration of the asphalt-rubber patents, FNF is now producing its own binder and will move ahead even more aggressively in our use of this material. We currently have work totaling more than 90,000 tons under contract for this year. *That will utilize rubber from 500,000 scrap tires!*

The inclusion of companies like FNF Construction means that highway departments will have more and more choices as they prepare bid requests in compliance with the 1991 Act. Asphalt rubber has proven itself in all types of applications and in all climates. It is a superior paving material that would be preferred even if it didn't provide a market for the millions of tires that are discarded each year. We are fortunate to have the availability of a new 80,000 sq. ft. tire recycling facility that will open next month in Mesa, Arizona. It will process four million tires annually for use in asphalt-rubber binder.

70-312 530
115 SOUTH 48TH STREET • TEMPE, ARIZONA 85281
POST OFFICE BOX 5005 • TEMPE, ARIZONA 85280-5005

AZ C1-A 069374 • AZ C1-B 083636 • NM CF98-27218 • NM CA98-27218 • CA 587527 • NV 0028660 • UT 0425160

FNF

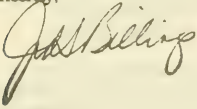
Rep. Nick Joe Rahall, II, April 7, page 2

FNF has always been a leader when it comes to environmental improvement and I am excited about what the increased use of asphalt-rubber paving materials will mean for our country. It is rare that a product can provide superior performance, be cost-competitive, and benefit the environment.

Even our conventional hot mix production plants are environmentally friendly. Last year we entered the California market with a project involving a 16-mile section of Interstate 40. Jim Lehman, director of the San Bernardino County Air Quality District in California, said our plant was the cleanest he had encountered in over 20 years of emissions testing and certification. That says a lot for our crews and equipment.

It is good to know that highway construction work and environmental protection can go hand in hand. The combination of the 1991 Act and the entrance of additional asphalt-rubber contractors will produce significant benefits for all citizens.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jed Billings". The signature is fluid and cursive, with the first name "Jed" being more prominent and the last name "Billings" written in a continuous script.

Jed Billings,
President

FACT SHEET

93 APR 12 AM 9:37

FNF CONSTRUCTION, INC.*Forging New Frontiers*

FNF Construction is one of the largest asphalt paving contractors in Arizona. Formed in 1984 as a heavy highway construction firm, FNF has been one of the West's fastest growing contractors. Its 1992 asphalt production exceeded 1 million tons.

The company is involved in all phases of highway construction, from underground work and grading to paving, soil cement, and bridge work. A growing portion of its highway paving projects involve *asphalt-rubber*, the unique blend of conventional asphalt and rubber from scrap tires.

FNF crews are equally split between major road projects in metropolitan areas and the remote sections of Arizona, California, New Mexico, Nevada, and Utah. 1992 projects included more than 175-lane miles of asphalt paving on sections of Interstates 10, 15, 17, and 40 in Arizona, California and Nevada. 1993 work includes numerous projects under contract with the Arizona Department of Transportation and major highway resurfacing projects in Nevada and California. Most of this work has *asphalt-rubber* finish courses.

FNF management and field crews have broad experience. "No one individual makes FNF tick," says Jed Billings, president. "We are a young company with qualified personnel who share a goal of enjoying our work and the rewards it brings."

The achievement of its leadership position in the rapidly growing Western states in less than a decade dramatically demonstrates the quality and commitment FNF Construction brings to every job.



INTERNATIONAL REFERRAL SERVICES

30450 Belmont Drive, Trappe, Md. 21673
410-476-3266 FAX 410-476-3266-23

93 APR -3 PM 2:23

31 March 1993

The Honorable Nick Rahall
United States Representative
Washington, D.C. 20515

Dear Representative Rahall;

I am a consultant and my client engaged this firm to write a feasibility study for scrap tire rubber uses. As part of our due diligence we examined the Intermodal Surface Transportation and Efficiency Act of 1991. This act, in Section 1038 addressed the incorporation of a percentage of scrap tire rubber in all Federally funded highway projects, starting in October 1993.

In researching this application found that technologies which incorporate ground rubber from scrap tires into asphalt pavements have been tested and used increasingly since the mid 1960s. The technologies have shown that pavement durability and performance can be increased through adding ground rubber to asphalt.

These technologies are safe, cost-effective and recyclable. Further we discovered that when scrap tire rubber is included in asphalt, the required layer of resurfaced road is thinner, costs less and has a longer life cycle. For every dollar spent on mixed rubber/asphalt in road construction the government is getting better value for the tax payers dollars.

Full implementation of Section 1038 will result in better, longer lasting roads and in the recycling of millions and millions of scrap tires each year. With over a BILLION scrap tires now in America, we add another 250 million tires each year. ISTEA addresses part of this environmental problem in a constructive and cost effective way. From all reports the implementation of Section 1038 does not impact on the Federal deficit.

You will be contacted by representatives of the conventional asphalt pavement industry or by state highway officials who are opposed to implementation of Section 1038. We have read most of the material they are sending out. Please know that there is no valid reason for resisting greater use of these effective and environmentally sound technologies.

I urge you to maintain Section 1038 of ISTEA in its current form and to support implementation of this law. Please let me know, so I can inform my client, what your position is on this important provision.

Sincerely,

Gerald Mahoney
Gerald Mahoney



NATIONAL ASPHALT PAVEMENT ASSOCIATION

NAPA Building ■ 5100 Forbes Boulevard ■ Lanham, Maryland 20706-4413 ■ Tel: (301) 731-4748 ■ Fax: (301) 731-4621
Mike Acott, President

April 16, 1993

The Honorable Nick J. Rahall, II, Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives
B-376 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The National Asphalt Pavement Association (NAPA) requests that this statement be included in the record of the April 20 and 21, 1993, hearings on Implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). We commend the Subcommittee for holding these hearings and appreciate the opportunity to present our views.

NAPA is the national trade association exclusively representing the Hot Mix Asphalt (HMA) Industry. We have a membership of nearly 800 corporations, most of which are HMA producers and paving contractors. The majority of our members are small businesses and our member firms produce approximately 70 to 75 percent of the total HMA produced in the United States annually.

Our stated legislative policy on the Federal-aid highway program is that the full amounts authorized in Federal-aid highway legislation be made available to the states for expenditure without obligational constraints. Further, all highway user fees should go into the Highway Trust Fund and be dedicated and available for use for transportation purposes.

We, therefore, support the Administration's and this Committee's initiative in providing full funding for ISTEA for 1993 and for the remaining years covered by ISTEA. We further support the initiative to extend the 2.5 cents of the federal fuel tax beyond 1995 and that the proceeds go into the Highway Trust Fund. This is necessary to fully fund ISTEA without triggering the Byrd Amendment.

Our industry does have some serious concerns, however, about the implementation of Section 1038, "Use of Recycled Paving Material." Section 1038 requires, among other things, that a certain percentage of HMA tonnage constructed with Federal-aid funds contain crumb rubber from scrap tires. These minimum utilization requirements are that 5 percent of the Federal-aid HMA tonnage in 1994, 10 percent in 1995, 15 percent in 1996, and 20 percent in 1997, contain crumb rubber modifier (CRM). Failure to comply results in the loss of Federal-aid highway funds.

Section 1038 further requires the USDOT and EPA conduct a study on the health and environmental impact, recyclability, and performance of asphalt rubber. There is also a provision that the

The Honorable Nick J. Rahall, II
 April 16, 1993
 Page 2

Secretary of Transportation can waive the minimum utilization requirements for a three-year period under certain conditions:

- The use of asphalt rubber poses threats to human health or the environment greater than conventional HMA.
- Asphalt rubber can't be recycled to the same degree as conventional HMA.
- Asphalt rubber pavements do not perform adequately as a material for the construction or surfacing of highways and roads.

The Secretary is to consider the results of the study mentioned above in determining whether a waiver is appropriate. A report is to be submitted to Congress within 18 months after passage of the Act (or June 18, 1993). Unfortunately, the report will not provide definitive answers as there is little information available on these issues.

Our concerns are the lack of knowledge of the health and environmental effects and engineering properties of rubber modified asphalt as well as the high cost of the product.

Perhaps it is late in the game for raising our concerns, but it has taken us considerable time to develop other solutions to the scrap tire problem. We hesitate to ask for relief without being able to offer some alternatives.

THE TECHNOLOGY

The use of ground rubber in HMA is not new technology, but has been in somewhat limited use for over 20 years. Except for a few localities, it has not received wide acceptance.

Two basic methodologies used to incorporate crumb rubber modifier (CRM) derived from scrap tires into HMA pavements are the wet and dry processes. The wet process describes a method that adds CRM to the liquid asphalt cement and blends the mixture prior to the manufacturing of HMA. The dry process basically includes the addition of the CRM directly into the HMA manufacturing process as an aggregate substitute. Certain of the wet and dry processes are covered by patents though in recent years several non-patented processes are being tried by the states and industry.

The use of asphalt rubber has been shown to be technically feasible but there are many questions that still need to be answered concerning this product. They include the health and environmental effects, recyclability, performance, and cost effectiveness.

Section 1038 does require studies into all of these areas (as mentioned above) except cost effectiveness.

COST IMPACTS

AASHTO, in analyzing the results of a recent survey of all the states on asphalt rubber, estimates that by 1997, at full implementation of Section 1038, the additional costs will be

The Honorable Nick J. Rahall, II
 April 16, 1993
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approximately \$1 billion per year. That is \$1 billion that won't be available for other needed highway construction. Up to 60,000 jobs per year could be lost. This is attributed to the costs of adding 20 pounds of CRM per ton of HMA constructed with Federal-aid funds. The 20 pounds per ton is a fairly typical mixture for CRM modified asphalt.

Here's another way of looking at cost:

- * An average passenger car tire weighs about 20 pounds. Approximately 50 to 60 percent of the tire is usable as CRM.
- * At 20 pounds per ton, that's two tires per ton of HMA.
- * Rubber modified asphalt costs between 50 and 100 percent more than conventional HMA.
- * HMA costs about \$30 per ton. Using the more conservative 50 percent increase, rubber modified asphalt costs \$45--or \$15 more per ton.
- * That's \$7.50 per tire to dispose of them in HMA. That still leaves somewhere around 40 to 50 percent of the tire that can't be used in HMA to be otherwise disposed of.

This clearly is not the most economical way to solve the scrap tire problem, unless these increased costs are offset by increased performance. Referring to the aforementioned AASHTO survey, most states believe that this will not be the case.

Crumb rubber is an asphalt modifier of which there are literally hundreds. It may or may not enhance performance in certain applications. If certain states have success with it, they should continue to use it based on engineering and economics, the same as the many other modifiers that are on the market. As a solution to the scrap tire problem, it just doesn't make any sense economically. As a performance enhancer in HMA, it should be left up to each individual state, but, again from an economic standpoint, there's absolutely no definitive information which would lead to the conclusion that it is worth the added cost; at least not at this point in time.

HEALTH AND ENVIRONMENTAL IMPACTS

Most HMA facility owners have gone to considerable expense to control the emissions from conventional HMA in order to meet Clean Air Act or state air control emission standards. With the addition of CRM, mixing has to take place at a higher temperature than conventional HMA. We do not know what the impact of this addition of CRM and mixing at a higher temperature will have on emissions. According to the AASHTO survey mentioned above, the Texas Air Control Board has stopped issuing permits for plants producing asphalt rubber until it can be shown that CRM will not harm the environment or adjacent property inhabitants. Michigan reported that its Department of Natural Resources has taken a like position. There has to be more research done before use of asphalt rubber becomes mandatory and widespread.

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The question is similar with regard to asphalt fumes and its potential impact on workers. For the past several years representatives of the industry have been in negotiation with federal officials on permissible exposure levels for asphalt fumes. The industry has conducted studies that show that worker exposure to asphalt fumes from conventional HMA does not pose a significant problem. However, the use of CRM introduces the concern that worker exposure may be more severe because of the chemicals contained in tires and the higher temperatures. There have been few studies on this issue with the result that there is no definitive answer to the question. On a recent NAPA-sponsored study of worker exposure on a wet process project in California, the researchers note in the report:

"The fume generated by the paving activities was reported to be dense and light-brown to gray in color, especially in the immediate vicinity of the paving equipment. The industrial hygienist reported that, relative to previous exposure monitoring studies performed at paving sites using standard asphalt hot mix materials, the degree of fume generation during paving using the asphalt/rubber hot mix materials appeared to be significantly greater."

Attached as Exhibit A are the conclusions from that report. This study was not designed nor intended to be definitive, but we believe it points out that further research and exposure assessments need to be conducted on this material.

Perhaps this best can be summed up by quoting the concluding paragraph from the March 1993 status report by the Scrap Tire Application Committee of the Ontario, Canada Ministry of Transportation:

"The development of new product applications must be accompanied by appropriate environmental and toxicological assessments. Collection of environmental data, such as leachates and emissions without doing a comprehensive environmental impact assessment is considered inadequate. Where large-scale applications, such as paving with rubber-modified asphalts are involved, long-term impact assessments are a must."

In a letter dated December 24, 1992, NAPA petitioned the USDOT and EPA to defer implementation of the minimum utilization requirements until the required research has been completed. The main basis of the petition is the potential increased health threat to our workers because of the unknown constituents of the fumes from asphalt rubber. As mentioned above, Section 1038 of ISTEA does require a study to be submitted to Congress this June. Unfortunately, this study will only contain the results of a literature search of existing information. In our opinion, this is inadequate because limited information is available on this subject. The Federal Highway Administration (FHWA) and EPA had planned to begin a comprehensive research effort this year to develop definitive answers to the issues posed in the legislation. We now understand that EPA does not intend to undertake further research on the health and environmental effects. Incidentally, we have not yet received a response from USDOT though an EPA response indicated they could not concur in any delay.

The Honorable Nick J. Rahall, II
 April 16, 1993
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RECYCLABILITY

Conventional asphalt pavement is completely recyclable. Our industry and the states were recycling asphalt pavements since the 70's, before it became fashionable. We don't know whether the addition of rubber to HMA, even in small amounts, will have an adverse impact on the recyclability of HMA. The engineering, health and environmental effects should be examined. If the addition of 20 pounds of crumb rubber to one ton of HMA renders it not recyclable, then we are exchanging a 20 pound problem for a 2,000 pound problem. This makes no sense at all. It's just another question that must be answered expeditiously.

THE SOLUTION

Attached to this letter is Exhibit B, the Executive Summary of the NAPA "Scrap Tire Utilization Technologies" report. Copies of the report have been furnished to this Subcommittee. The report uses engineering feasibility and economic analysis to evaluate various technologies for the use of scrap tires. It also considers potential environmental implications. It clearly points out that there are much more economical and environmentally benign ways to solve the scrap tire problem than Section 1038 of ISTEA. There are several alternative courses of action which can be taken on this issue as follows:

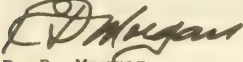
1. We urge that Section 1038(d) of ISTEA be amended to allow flexibility in the minimum utilization requirements. The minimum utilization requirements should be expanded to uses other than in HMA. Use in bases, lightweight fills, retaining walls, shoulder stabilization, etc., should be permitted to fulfill the minimum utilization requirements. Further, use in other than Federal-aid work should be counted toward the minimum utilization requirements. If the goal is to get rid of scrap tires, and not to expand the market for asphalt rubber, it makes sense to provide the states with a range of options for solving the scrap tire problem.
2. The solution to the scrap tire problem does not lie with any specific technology and would be more appropriately addressed in a comprehensive rather than piecemeal fashion. We urge you to take a leadership role in enacting legislation during the 103rd Congress that would require each state to devise its own solution to the scrap tire issue with the goal of eliminating the backlog of scrap tires as well as the annual accumulation. Each state should be required to submit a plan to EPA that identifies how it intends to handle its scrap tire problem. This legislation should be technology-neutral leaving it to the states to determine the best way of solving the problem. For those states that submit an acceptable plan to EPA, the minimum utilization requirements of ISTEA would not apply.
3. Defer implementation of the minimum utilization requirements until the required research has been completed and submitted to the Congress and Congress approves going ahead with implementation.

The Honorable Nick J. Rahall, II
April 16, 1993
Page 6

We believe that our position is supported completely by the experience of the states as reflected in the results of the AASHTO survey and that there is adequate basis for this Subcommittee to revisit Section 1038 of the ISTEA and take the necessary action to amend it.

In these times of environmental sensitivity, economic uncertainty and tight budget, a more rational approach is surely in order.

Sincerely,



R. D. Morgan
Vice President

RDM/KMW

Attachments

5.2 Conclusions

This study was designed as a pilot study to develop preliminary data on occupational exposures and fume content of chemicals potentially present in asphalt/rubber fume. The limited number of samples collected prevents a statistical evaluation of the data. The following conclusions are based upon observed trends in the data.

- Although the results of personal air sampling reveal no overexposures to Cal/OSHA regulated substances, the results of area air sampling demonstrate that the potential exists for worker overexposure to asphalt fume when working near the paving equipment.
- The results of the BSF analyses that was performed on the total particulate samples indicate that greater than 60% of the materials collected as total particulate from the screedman, paver operator, and paver area is an organic (benzene soluble) material. Further testing should be performed to determine the specific nature of this organic fraction.
- Observations made during this study indicate that paving operations using the asphalt/rubber material generates a denser asphalt fume than traditional asphalt materials. Further investigations should be performed to assess the relative degree of fume generation from these materials.
- Of the workers sampled during this pilot study, the screedman has the highest potential for exposures followed by paving operators and laborers.
- The results of tank headspace fume sampling suggest that PAH and SH concentrations are greater in the fume from the molten asphalt. These compounds may become tied up in the asphalt/rubber matrix. Volatile aromatic compounds, 1,3-butadiene and nitrosamines concentrations were greater in the fume from the asphalt/rubber tank. These chemicals may be released from the GTR materials.
- Several analytical variables may influence the quantitation of low and high molecular weight sulfur compounds. Additional method validation procedures should be performed to evaluate the accuracy and precision of this analytical method. Additional testing for 1,3-butadiene should be performed to quantify the exposure potential for this chemical.

SCRAP TIRE UTILIZATION TECHNOLOGIES

Executive Summary

The United States is faced with the seemingly daunting task of finding ways to dispose of the 285 million tires that are discarded each year and the estimated 2 to 3 billion tires currently stored in stockpiles. The problem has reached such a proportion that it has been addressed in legislative mandates.

To assist those responsible for assessing available options and finding solutions, the enclosed *Scrap Tire Utilization Technologies* report has been published to provide a comparison of the current uses that have the potential for substantially reducing the scrap tire problem. This report uses engineering feasibility and economic analysis to evaluate each technology and also considers the potential environmental implications.

The analysis found that:

- 1) Scrap tires can be an efficient, economical and environmentally-benign energy resource (tire-derived-fuel or TDF). They are being successfully used as supplemental or primary fuel in cement kilns, pulp/paper mills, electric utilities, pyrolysis units and dedicated tires-to-energy facilities. Last year, 57 million scrap tires were used by these industries. The potential TDF usage within five years is predicted to be 230 million scrap tires.

As a fuel source, scrap tires can provide the following benefits:

- generate greater Btus per pound than some conventional fuels
- are cheaper per Btu than many other fuels
- can generate income

- when compared to traditional fuel sources, have the same or lessor environmental impact on air quality
 - are completely consumed in the burning process
 - preserve natural resources and decrease dependence on imported oils
- 2) Scrap tires are being successfully used in such civil engineering applications as lightweight embankments, drainage layers, slope stabilization and retaining walls. A detailed review of highway construction projects in six states found whole and shredded scrap tires can be equal to or superior than traditional materials, and are often available at substantial cost savings.

In civil engineering applications, scrap tires have the following advantages:

- preparation requires minimal or no energy consumption
 - are a lightweight fill material
 - replace more expensive or scarce aggregate
 - have high permeability characteristics
 - are resistant to ultraviolet radiation
 - provide improved thermal characteristics relative to frost penetration
 - are cost effective
- 3) Scrap tires are being used as an additive to asphalt in road pavements. While the addition of scrap-tire rubber to asphalt has proven to be technically feasible, it has not proven to be cost beneficial. There are other concerns regarding the use of crumb rubber in asphalt including its unknown impact on the environment and on the health of the work force when used in this application.

The issues surrounding rubber modified asphalt include:

- modifier uses only 50 to 60 percent of scrap tire
- production requires increased energy consumption
- modifier increases cost of an asphalt pavement by more than 50 percent with no proven equivalent life performance benefit

- uncertainty over recyclability of the material
- unknown effect of fumes on workers
- lack of national standards on mix design procedures and performance criteria

Comparison of the Scrap Tire Technologies

	Energy Resource	Civil Engineering	Crumb Rubber in Asphalt
- "cost" advantage per tire	+\$.15 to \$1.26	-\$.20	-\$7.50
- cost effectiveness	yes	yes*	unknown
- fume exposure to workers	none	none	unknown
- air emissions	same or less	none	unknown
- percentage of tire reused	75 - 100%	100%	50 - 60%
- engineering value	yes	yes	unknown
- conserves natural resources	yes	yes	no

*Depending on transportation costs, scrap tires are usually less than conventional materials.

The report concludes that there are economical uses for scrap tires, particularly as a fuel source, and uses with the potential for consuming large quantities of scrap tires. It suggests that an economic analysis be a major factor in determining the best solutions, and that incentives be used to promote scrap tire usage. It further recommends that air permitting regulations be standardized and the public be educated about the available technologies.

AMERICUS DIVISION
P. O. BOX 147
AMERICUS, GA 31709
PH: 912 924 4001
FAX: 912 924 4717

TIFTON DIVISION
P. O. BOX 928
TIFTON, GA 31789
PH: 912 924 4441
FAX: 912 924 4717

ALBANY DIVISION
1615 OLD JIM DAVIS RD.
ALBANY, GA 31707
PH: 912 881 8011
FAX: 912 436 4925



REEVES CONSTRUCTION CO.
P.O. BOX 547, AMERICUS, GA 31709
PH: 912 924 4001 FAX: 912 924 4717

April 1, 1993

MACON DIVISION
P. O. DRAWER P
MACON, GA 31202
PH: 912 743 0593
FAX: 912 746 0733

HOLLAND DIVISION
P. O. BOX 215
MT. VERNON, GA 10445
PH: 912 583 2221
FAX: 912 583 2825

TELESCOPE DIVISION
P. O. BOX 968
TELESCOPE, GA 10577
PH: 706 886 1104
FAX: 706 886 1611

Congressman Nick J. Rahall, II
Chairman, Surface Transportation Subcommittee,
on the Public Works and Transportation Committee
2269 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rahall:

I enjoyed and appreciated your remarks at the Georgians For Better Transportation meeting in Atlanta, Georgia on March 25, 1993. It is good that the transportation industry has a leader and supporter in Congress.

I am sure that you probably have already received information and complaints concerning the mandate of Section 1038 of ISTEA, requiring the States to use scrap tire rubber in Hot Mix Asphalt (HMA) pavements beginning in 1994. However, I wanted to express the concerns of the Georgia Hot Mix Asphalt Industry.

The legislation was an attempt to alleviate the disposal problem of 285 million tires discarded annually. This legislation has placed the undue burden of solving the nation's scrap tire problem on the HMA Industry.

With present knowledge and technology concerning scrap rubber in HMA, this legislated mandate is probably premature and costly. The addition of scrap-tire rubber to HMA has not been proven cost effective. There are other unknowns that need investigation, before mandating usage.

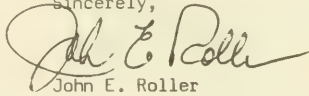
There are other more economical and possibly environmentally favorable methods of utilizing scrap tires. The enclosed publication, "Scrap Tire Utilization Technologies", compiles existing information on the use of scrap tires. We believe this publication, sponsored by the National Asphalt Pavement Association (NAPA), is an objective and informative summary of possible uses of scrap tires.

Also, enclosed is a copy of a letter from the Commissioner of the Georgia Department of Transportation to Mr. Francis B. Francois, Executive Director of AASHTO. This letter expresses the concerns of the Georgia

Department of Transportation about the mandated usage of scrap tires in HMA pavements.

When the Technical Corrections Bill for ISTEA is presented this year, please consider amending Section 1038 of ISTEA to delay or eliminate the mandate to use a certain percentage of rubber from scrap tires in HMA pavements constructed with Federal-Aid Funds, beginning in Fiscal Year 1994.

Sincerely,

A handwritten signature in dark ink, appearing to read "John E. Roller". The signature is fluid and cursive, with the first name "John" and last name "Roller" being clearly legible, and "E." in the middle.

John E. Roller

Vice President, Reeves Const. Co.
NAPA State Director.

WAYNE SHACKELFORD
COMMISSIONER

G. CHARLES LEWIS
STATE HIGHWAY ENGINEER

Department of Transportation
State of Georgia
#2 Capitol Square, S.W.
Atlanta, Georgia 30334-1002

CRAN, C. BRACK
DEPUTY COMMISSIONER

ARTHUR A. VAUGHN
TREASURER

January 26, 1993

RECEIVED
MAR 11 1993

DEPARTMENT OF TRANSPORTATION
CRIMINAL MATERIALS RESEARCH

Mr. Francis B. Francois
Executive Director
American Association of State Highway
and Transportation Officials
444 N. Capitol Street, NW, Suite 249
Washington, DC 20001

Subject: Policy Resolution PR-15-92 on Flexibility in Using Reclaimed Rubber

Dear Mr. Francois:

Thank you for providing us with a copy of FHWA Administrator Larson's response to Policy Resolution PR-15-92 dealing with flexibility in use of recycled rubber. Since FHWA is unable to address this issue by rulemaking, we should consider legislative action to get Section 1038 of ISTEA amended.

The lack of flexibility precludes our use of recycled tires in lightweight fill, embankment stabilization, erosion control, highway abutments, and sound attenuation. These uses for recycled tires may be more cost effective than using the recycled rubber in hot mix asphalt. The states should be allowed to determine the most effective use for reclaimed tires in their highways. Whether the reclaimed tires are used in embankment stabilization or in an asphalt-rubber mixture the goal of disposing of this waste product is met. We have no field data that proves asphalt-rubber in hot mix asphalt substantially improves its performance or that it is cost effective.

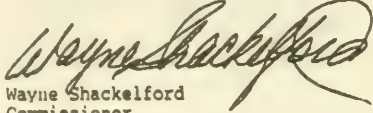
The use of recycled tires in asphalt-rubber mixtures will drive up the price of used tires. This will likely cause the cement and power plants that are now using tires for fuel to use other fuels that should be conserved. The use of tires for combustion has the potential to use a large number of tires in a way that minimizes the effects on the environment. The environmental effects of using asphalt-rubber are yet to be determined.



Mr. Francis W. Francois
Page 2

The Georgia Department of Transportation is prepared to do its part to enhance and protect the environment and to do the will of the Congress. However, we need clarification whether Congress really intended for reclaimed rubber to be used only in hot mix asphalt to the detriment of other potential highway uses for this rubber as Section 1038 of ISTEA forces upon us. AASHTO should pursue this matter in order to provide the member states the opportunity to use scrap tires in the most cost effective and environmentally desirable manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wayne Shackelford", with a large, sweeping flourish at the end.

Wayne Shackelford
Commissioner

WS:dm

SCRAP TIRE UTILIZATION TECHNOLOGIES

Executive Summary

The United States is faced with the seemingly daunting task of finding ways to dispose of the 285 million tires that are discarded each year and the estimated 2 to 3 billion tires currently stored in stockpiles. The problem has reached such a proportion that it has been addressed in legislative mandates.

To assist those responsible for assessing available options and finding solutions, the enclosed *Scrap Tire Utilization Technologies* report has been published to provide a comparison of the current uses that have the potential for substantially reducing the scrap tire problem. This report uses engineering feasibility and economic analysis to evaluate each technology and also considers the potential environmental implications.

The analysis found that:

- 1) Scrap tires can be an efficient, economical and environmentally-benign energy resource (tire-derived-fuel or TDF). They are being successfully used as supplemental or primary fuel in cement kilns, pulp/paper mills, electric utilities, pyrolysis units and dedicated tires-to-energy facilities. Last year, 57 million scrap tires were used by these industries. The potential TDF usage within five years is predicted to be 230 million scrap tires.

As a fuel source, scrap tires can provide the following benefits:

- generate greater Btus per pound than some conventional fuels
- are cheaper per Btu than many other fuels
- can generate income

- uncertainty over recyclability of the material
- unknown effect of fumes on workers
- lack of national standards on mix design procedures and performance criteria

Comparison of the Scrap Tire Technologies

	Energy Resource	Civil Engineering	Crumb Rubber in Asphalt
- "cost" advantage per tire	+\$.15 to \$1.26	-\$.20	-\$7.50
- cost effectiveness	yes	yes*	unknown
- fume exposure to workers	none	none	unknown
- air emissions	same or less	none	unknown
- percentage of tire reused	75 - 100%	100%	50 - 60%
- engineering value	yes	yes	unknown
- conserves natural resources	yes	yes	no

*Depending on transportation costs, scrap tires are usually less than conventional materials.

The report concludes that there are economical uses for scrap tires, particularly as a fuel source, and uses with the potential for consuming large quantities of scrap tires. It suggests that an economic analysis be a major factor in determining the best solutions, and that incentives be used to promote scrap tire usage. It further recommends that air permitting regulations be standardized and the public be educated about the available technologies.

Mr. RAHALL. The Chair will continue recognizing Members for questioning in the order in which they came in this morning. The next one for recognition is the gentleman from New Jersey, Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

I have two questions. One you touched upon in your opening statement: the relationship of MPOs. Yesterday, we heard from some of the witnesses about MPOs, and in testimony later today, there are some suggestions that while localities under the guidelines are responsible for programming certain funds, they have been circumvented in the process.

The question is, from your experience in terms of a nationwide perspective, how successfully are the MPOs operating? Everybody seems to herald the flexibility of it, but I am concerned about whether they are properly constituted in terms of representation. Two, whether or not, as I think we will hear later today from Mayor Dinkins and maybe others, the UPO process is being circumvented, and, if so, how do we rectify that?

Mr. CARLSON. Well, we have both success stories and major concerns, in all honesty. The ISTEA is a significant piece of legislation, and we are going to have to develop the relationships and the partnerships in order to make it work.

On the other hand, the San Francisco Bay area has initiated a major effort called the Bay Area Partnership, and it is working quite well; and they seem to have decided pretty well what they want to do.

Albany, New York, has involved the local interest groups in the development of their Transportation Improvement Program, and they have some objective evaluation criteria to be used, and it is working.

Pittsburgh is implementing a major plan update with significant public involvement and initiative.

And in each case I think it is something that we are trying to expand and provide information on to the rest of the country. But the proposed regulations have opened a number of issues, most of them unique to individual areas.

We have received a letter signed by six of the mayors of the largest cities in the country, saying that they are not getting their share of obligation authority to cover the amounts of money that are made available to them under this bill. One of the things that I think is happening is that the new ISTEA provisions for metropolitan areas are somewhat complex, and the States, during the first year at least, have had to use the projects that they have had more readily available. I believe the role of local governments will be more clearly defined over the life of the bill.

The cities will get their fair share of obligation authority as spelled out in the ISTEA. It is going to take a little time for the State-MPO relationships in some areas to get geared up, although I think it is happening.

Knoxville has been very interested in the weighted voting in MPOs. We have heard a lot of that. Kansas City, where I lived from 1985 to 1989, has been very concerned about the boundaries of the MPO and how it ties into the boundaries of their now

inattainment area, but at the time the Clean Air Act was passed, nonattainment area.

Fair share issues have been raised by Baltimore, Milwaukee, New York, Los Angeles, and Chicago, and when you get that kind of list, you pay attention.

We have attempted to address these issues in responding to these inquiries, and we are meeting with these groups. We have held a series of meetings around the country, and are doing everything we can to point out the need for positive partnerships.

Unfortunately, the strengthening of the MPO position in ISTEA essentially strengthens the mutually effective veto power we have had in urban areas for a long period of time. It does require that people work together better, and we are going to help, to the extent that FHWA can, through our regulations and in our outreach efforts, with all the MPOs. We are going to try very hard to get them to be able to develop the projects that a particular area needs and work with them to achieve those goals.

Mr. MENENDEZ. Well—Pittsburgh was one of those areas that you have highlighted, and that certainly seemed to be a model from the testimony that was presented, but what happens in those areas where your cajoling doesn't work? My concern is, what happens in terms of those areas that are not models?

You said there are some great examples and some major concerns. Where there are major concerns, where the efforts to bring about the type of MPO that are successful elsewhere don't take place, ultimately transportation users will suffer. The question is what do you do in the regulatory process, if anything?

Mr. CARLSON. Well, I would answer that by saying that we have to make it effective, because FHWA is in a position of assisting transportation improvements, not in dictating any kind of a solution to transportation problems at a metropolitan area level. We will work hard with them to make sure that we do eventually end up with Transportation Improvement Programs that the local areas, with all the misgivings that some parties may have, will approve.

The ultimate answer is that if the metropolitan areas are not able to come to some reasonable conclusion, a couple of things happen. Number one, we won't be able to give them the Federal aid for their projects; and number two, the legislation requires a certification of the planning process. If they cannot decide together on what their planning process is going to produce, it is going to be difficult for us to certify their process.

Mr. MENENDEZ. There is a suggestion that if in fact there are certain interests that would not like to see monies flow a certain way by, in essence, reaching that impasse, those dollars can be used then for other purposes. Is that an inherent possibility in this process?

Mr. CARLSON. If there is a complete loggerheads issue, then no money can be used essentially for anything. So I don't believe that one gains by threatening to be a nonplayer in this activity.

Mr. MENENDEZ. If I may, Mr. Chairman, one more question.

As you have seen the MPOs constituted throughout the Nation, what are the representation aspects of the MPOs? Do they seem to be fairly represented?

Mr. CARLSON. Well, as far as the weight of the representation, we leave that to the local areas. It varies across the country. Some States have one vote per jurisdictional authority; some metropolitan organizations weight by population. I think that what we are interested in is a partnership arrangement that people can live with.

If there is a difference, we would like to have the local areas work it out.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Arkansas.

Mr. Hutchinson is next.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. Carlson, I appreciate your testimony today; and I wanted to—as somebody from Arkansas, give a word of commendation for Rodney Slater. I think you are, and America is, fortunate. I am confident he is going to do a superb job, just as he has done for us in Arkansas, and we look forward to working with him up here.

In your testimony, you referred to enhancing safety. You gave some glowing statistical information on what has happened in the last 30 years, such as the fatality rates, which is very encouraging, but you also refer to broad-based initiatives, such as the commercial driver's license program and stricter drug and alcohol enforcement.

Could you elaborate on what the administration is doing in those areas, for those of us who may not be as familiar with the commercial driver's license program and what is being done on alcohol and drug enforcement?

Mr. CARLSON. Each commercial vehicle operator in the country is required to have one single driver's license. The legislation, I believe, was passed in 1986. We have been successful in that the States have now issued over 6.3 million commercial driver's licenses (CDL) and all States are linked via a commercial driver's license information system, so that if a person applies for a license in one State and he has been suspended in another State, he cannot get a license in that first State. We think this is very effective in keeping people that flaunt the law off the highways.

Our motor carrier safety program has created some interest in other activities as well. The commercial driver's license requirements have brought to the forefront medical qualifications that have been in the regulations for many, many years. We have been working, trying to develop some techniques to allow people who have been driving with very safe records to continue driving. We have a vision waiver program that will accomplish that.

We expect to publish a notice of proposed rulemaking to determine if each State is really in compliance with the commercial driver's license provisions; and we will put out a final rule as required by law later this year.

Because of the great job that the States did in issuing commercial driver's licenses, I don't think we will be put in the position of worrying about any sanctions due to a State's noncompliance with the CDL requirements.

The alcohol and drug issue is a little different, because we have been challenged in court and there are many different views on that issue. We have four States that are currently involved in ran-

dom testing for drug and alcohol use on the highways. One of them is my home State of Nebraska. The information that I found to be very interesting was that the statistics show somewhere close to 4 percent of the drivers tested are testing positive for one of the drugs that are prohibited. Only about 0.2 percent of the drivers are testing positive for alcohol consumption.

It says to us that we may have a bigger drug problem among drivers than we would certainly like to have or even than we thought was out there.

Mr. HUTCHINSON. Was there—on the commercial driver's license program a date for State compliance?

Mr. CARLSON. Yes. All the drivers were required to be licensed by April 1, 1992.

Mr. HUTCHINSON. You do not foresee any States being out of compliance and the necessity for sanctions?

Mr. CARLSON. I am very positive about the job the States have done on this. I think it was an absolutely tremendous job, being able to license that many drivers. And the States do run the licensing program; it has to meet our requirements, but it is basically their program, and they did a tremendous job of issuing that many driver's licenses.

Mr. HUTCHINSON. Thank you.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from California, Mr. Baker.

Mr. BAKER. Pass.

Mr. RAHALL. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Carlson, I regret that Mayor Dinkins was delayed and couldn't be here until a little later; but he has left us his statement, and he makes certain statements, and I would like to ask you a couple of questions based on them and based on what you said a few minutes ago.

The Mayor, in his testimony, says "Our experience with the new bill shows that the MPO process is virtually ignored when project selection and funding decisions are made. * * * Localities are responsible for programming these funds." He is talking now about congestion mitigation and air quality funds.

"Despite this clear direction, for the last two years these vital air quality monies have been allocated and programmed outside the MPO process—in fact, New York City has yet to receive a single penny under this program to help comply with the new Clean Air Act mandates, even though our air quality problems are second only to Los Angeles."

He also says, "One way to redress this problem is to add legislative language to ISTEA that would allocate a permanent, direct percentage of air quality funds to localities based on the relative severity of the pollution problem within each State."

He says, "Our experience with Federal funding is not unique to New York. Unless funds are directly provided to cities, they will not necessarily materialize in the areas targeted to receive them."

In other words, New York State and perhaps other States are sabotaging the planning purposes of the ISTEA, according to the Mayor, in at least some respects. The city is not receiving the money he feels it should be getting. He suggests we directly allo-

cate the money and not trust the States—or at least some of the money, and not trust the States to do it.

Your testimony a little earlier, in answer to a similar query, was that, well, some of these funds—the planning process is complex and it is a gearing-up problem and over the life of the bill localities will get their fair share, or what they were supposed to get.

Do you think this problem is entirely a problem of gearing up a new planning process, or do you think it is possibly a problem of State planning agents, State DOTs and State legislatures, which have political pressures upon them different from those that resulted in the ISTEA Act, trying to implement their priorities rather than those of the Act?

Mr. CARLSON. Well, I think that there probably are some States, I am certainly not speaking of New York, that feel somewhat constrained by this. But I also have to tell you that any requirements for Clean Air Act development of projects and the use of CMAQ funds are new in ISTEA.

We have been challenged in court. Maybe I am not supposed to talk very much about it, because New York is one of the areas where we have been challenged for not requiring that CMAQ funds be distributed during that first year with the Transportation Improvement programming as a base.

As we continue the ISTEA implementation, I believe that the Transportation Improvement Program, as part of the Metropolitan Planning Process, will redress the issues the Mayor is talking about regarding how the funds get allocated.

The issue, though, of the obligation authority, is another issue entirely. There are two separate issues here, if I may. The obligation authority issue: Over the life of the authorization, the metropolitan area will get the funding that was guaranteed to it by ISTEA by a percentage formula allocation. Their obligation authority, if there is full funding of ISTEA, will be what is in the bill. Their obligation authority, if the ISTEA is not fully funded, will be directly proportional to the amount of money they would have gotten had the ISTEA been fully funded.

Mr. NADLER. You think failure to get it thus far is purely a start-up failure?

Mr. CARLSON. I think most of it is a start-up failure, and New York City is a complex area, sir.

Mr. NADLER. Let me ask one other question. I am a new Member of Congress, but I was a member of the legislature of New York last year; and I know, as chairman of the legislative committee with oversight jurisdiction in this area in New York, it was very evident the State Department of Transportation had every intent of doing everything it could to frustrate the intention of ISTEA flexibility, of shifting money from, some money in New York from highways to mass transit.

In your observation—when the ISTEA bill was passed, Senator Moynihan said the purpose of the bill was that Montana, presumably, would choose to spend all its money on highways and New York might choose to spend a good proportion of that money on mass transit.

Observing around the country, has it been your observation that the expectations of the flexibility provision of the bill have been

met; that States with large mass transit systems are, in fact, spending some of those flex funds, or a reasonable percentage of those flex funds on mass transit, or all—are they keeping it all on the highway side?

Mr. CARLSON. Well, actually I think California, for example, transferred about \$50 million; New York transferred \$100 million out of the interstate substitution funds to transit, and another \$100 million out of other categories of ISTEA.

Mr. NADLER. What proportion is that of New York's categories of the flex funds?

Mr. CARLSON. I don't know what percentage of the flexible funds that would be. In New York, it is probably a fairly high percentage.

Mr. NADLER. When you speak of that \$200 million figure, is that over the life of the bill, or for the year that just passed?

Mr. CARLSON. That is, I believe to date, cumulative as of February 28th.

Mr. NADLER. Meaning appropriations, not just authorization?

Mr. CARLSON. This is what has actually been transferred.

Mr. NADLER. Okay. Thank you.

Mr. RAHALL. The gentleman from Missouri, Mr. Emerson.

Mr. EMERSON. No questions, Mr. Chairman. Thank you.

Mr. RAHALL. The gentleman from Texas, Mr. Laughlin?

Mr. LAUGHLIN. Thank you, Mr. Chairman.

Mr. Carlson, I want to ask you in the Clean Air section—and I don't find it looking through your notes, although I could have overlooked it—I understand in some areas of the country—and I will be specific about Houston, which I do not represent—the highway improvement program is done in segments. And I am going to use Highway 59 as the example, and it does run several hundred miles through my district.

The problem that I am hearing from the Houston people is, outside of town, in the construction that has been done in phases, you will have a highway—and I am just going to say it is a total of six lanes, three going north and three going south—and if progressed on into the city, it is one of, ah, that is one of these nonattainment areas I thought they were going to claim, number one; now I hear New York claiming they are only number two.

But at any rate, you get inside the city and you have six lanes that have been under construction, so they don't come within the provision of this law, but to carry the highway on through town, which is about 40 miles, as I appreciate, or 50 miles through town, you cannot go to six lanes because then it becomes new construction under ISTEA; and they are not an attainment area, so they cannot match up the lanes.

So what we have is a funnel, in effect. Do you follow me?

Mr. CARLSON. Yes.

Mr. LAUGHLIN. Now, is there some exemption in this bill, or are the people involved interpreting this correctly, that you cannot go ahead and match your highway up so that you have a constant flow? Because if we are trying to get clean air, if you are bottlenecking the traffic, you are going to increase the pollution rather than reduce it by constraining the construction to match the highway. Do you follow me?

Mr. CARLSON. I think I do, sir. Actually, one of the difficulties—

Mr. LAUGHLIN. You have an aide that wants to give you some information that I hope will clarify my question.

Mr. CARLSON. You can build an additional new facility through a city as long as it is in conformity with the Clean Air Act amendments. Now, if—

Mr. LAUGHLIN. But you are picking on, or it sounds like you are evading me. My point is, you have some that is under construction, so this bill doesn't apply. But in order to complete and have a smooth flow, this bill restricts because it does not meet the Clean Air provisions.

Mr. CARLSON. In Houston, it would seem to me like there are useful sections of Highway 59 that are not the full 50 miles long. So when we start into a program of improving a highway across an urbanized area like Houston, I think we would look for other ways that we might be able to do things along the line of HOV lanes. They have a very successful HOV program in Houston. That is one possibility.

If the Clean Air Act activities and the Transportation Improvement Program indicate that they need more lanes through an area, it is possible to do that, but there is a penalty in ISTEA that says that you don't get as high a percentage of participation if they are built for single-occupancy vehicles.

Mr. LAUGHLIN. But my point is, you have already got some of the lanes down.

Mr. CARLSON. I understand.

Mr. LAUGHLIN. You are going to penalize them if they build the additional lanes to have a continuous flow. And I don't mean they need to start and go the full 50 miles. I am giving you the example that 30 miles of it is complete to six lanes; and the other 20 miles, four lanes, and you are going to penalize them if they go to the six lanes.

Mr. CARLSON. This is not a new problem for highway engineers over the last 40 years, because this has occurred several times. In fact, I remember some bridges that stuck up in the air in Houston with no road connected to them for some time. When you do planning and you work on this, you can get into these kinds of anomalies.

It seems to me like ISTEA set a new basis for how we approach that kind of a situation. I believe that we should take another look at those kinds of facilities and see what ought to be done with them under the provisions of ISTEA, rather than to give an automatic exemption all the way across an urbanized area.

Mr. LAUGHLIN. The last question I have, have the people in your department or agency made any effort to identify the pork barrel that is in this bill that the people in the other body, other side of the Capitol, have been talking about for the past month and trying to hold up the continual funding and authorization of this funding for ISTEA?

Mr. CARLSON. Are you talking about the economic stimulus bill now?

Mr. LAUGHLIN. That is all a part of it. We are hearing in substantial numbers that there is a lot of pork barrel in here, and I

wonder if you have all gone along and identified the States the people in the other body are from, so that you can go through and identify the pork barrel in their respective States?

Mr. CARLSON. We would prefer not to do a whole lot of work in that area, sir. But I will say this: In our proposal for highways in the stimulus package, since it just increases the obligation authority, there is no special criteria for projects included in our proposal or in your bill, so basically I don't see any pork in the highway part of this program—unless, of course, some State elects to use it on some project that someone might question. I don't see that as a very serious problem, however.

Mr. LAUGHLIN. It is generally in somebody else's State anyway, isn't it?

Mr. CARLSON. I don't know. As long as you just raise the obligation authority, it does not lend itself to what I would call "demonstration projects."

Mr. LAUGHLIN. Thank you, Mr. Chairman.

Thank you, Mr. Carlson.

Mr. RAHALL. The Chair might respond to that last point.

In all fairness and objectivity, it appears even in the other body that both sides of the aisle agree to full funding of ISTEA. That does not seem to be a major sticking point.

Mr. CARLSON. Yes, sir.

Mr. RAHALL. The gentlelady from Washington, Ms. Cantwell.

Ms. CANTWELL. Thank you, Mr. Chairman.

I want to follow up on some of the questions, Mr. Carlson, that were asked in regards to the congestion mitigation-air quality program. I have heard a lot of concern from people in my State, the State of Washington, the MPOs, about the regulations and in some ways, I guess, a contradiction of the intent of the program and what is actually being approved.

I guess counter to what my colleague from New York said, I think that Washington State has probably got one of the best programs going as far as the implementation of ISTEA, because we passed a State growth management act and air quality bill and a transportation demand management legislation that laid all this out and coordinated it at the same time Congress was passing ISTEA. So I don't think our fault is at the local level in coordinating land use and transportation and air quality.

My concerns are that some of the projects are being improved right now, the TIP programs and others are being held up until they approve their reductions in air quality; and some regions are basically being told not to apply for this funding, even though it would reduce their TDM programs, Transportation Demand Programs, and another seeming contradiction about alternative fuel programs that are not being approved.

So I guess my question comes down to the point about your new rules that you and EPA will be working on to implement this section; and exactly how do we send a clear message to the local communities, who I think are doing a good job at trying to meet these requirements, but are not quite clear exactly what the requirements mean and are having a lot of trouble fulfilling them?

Mr. CARLSON. Well, that is kind of a hard question to answer. Right now the congestion mitigation and air quality improvement

funds go to the State. Some States, like Washington, as you point out, have probably moved as far as a lot of them. But some States are holding those funds for transportation management strategies that are still being developed as a part of the State implementation plans.

To that extent, I think that the State is going to have to work very closely with the local areas to develop the right kinds of plans to accomplish the intent of the Clean Air Act.

I am familiar with the HOV program in Seattle and some of the things they are doing out there, and I don't know whether there is a problem out there. If there is, I don't believe it has been brought to our attention.

Ms. CANTWELL. So you are saying the Federal Highway Administration has not told regions not to apply for those funds based on Transportation Demand Management strategies?

Mr. CARLSON. No.

Ms. CANTWELL. Okay. What will be the process, then, for this new rule that you and EPA will be developing to implement this program; and what will be the input process for local governments?

Mr. CARLSON. Are you speaking now of the conformity rule?

Ms. CANTWELL. Right.

Mr. CARLSON. We have been working on the conformity rule with EPA for a significant length of time, and finally we put the proposed rule out. Now there are a series of hearings going on, and in fact some of the State air quality representatives are planning some hearings as well.

Hopefully, we will be able to come to some sort of final determination on that rule with EPA, certainly before the end of this year. Then we hope to have those requirements set out in more specific language.

One of the issues is that there are groups of people in this country that feel like the conformity rule should apply to all projects, not just federally aided projects, and that they also should apply statewide. And that is something that we thoroughly discussed with EPA during the development of the proposed rule. And until that issue gets settled, it is going to be hard for a State to know exactly what to do in achieving the conformity that will be required.

Ms. CANTWELL. Well, perhaps I can encourage our local MPO to specify what they think are the apparent contradictions in the direction on that rule and get that to you.

Mr. CARLSON. They should certainly comment on the rule. We have been encouraging that very much, as has the American Association of State Highway and Transportation Officials, because it is a critical rule to the ability of States to advance transportation facility capital improvements.

Ms. CANTWELL. I guess I would just end on this note, that at the local level I really do think they have done a great job in Washington State of coordinating. We had to really push the State of Washington to coordinate among itself, DOT and our Department of Ecology, so I hope we don't have to encourage at the Federal level the Federal highway system and EPA to work to solve this.

Mr. CARLSON. We are trying very hard to do that.

Ms. CANTWELL. Thank you.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard.

Mr. POSHARD. I have no questions.

Mr. RAHALL. Does anybody have questions on the second round?

If not, I have one final question, Mr. Carlson, and this has not been touched upon thus far. It is in regard to ISTEA's Highway Timber Bridge Research and Demonstration Program, which provides for timber research and construction grants.

As you know, the Forest Service administers the National Timber Bridge initiative which provides for research and construction grants. My question is, is there any coordination between FHWA and the Forest Service on these two programs?

Mr. CARLSON. We are aware of the Forest Service's interest and have worked with them on it. We have not coordinated with them on the approval of the projects that have been submitted. We have, I believe, about \$14 million worth of timber bridge allocations that have been made, and we have the ongoing research over in West Virginia that we will be relying on. We are essentially following the terms of the Act.

Mr. RAHALL. Thank you. Thank you, Mr. Carlson.

I am going to call the next panel to testify at this point, but with the understanding that if Mayor Dinkins should arrive, we will interrupt to take his testimony.

I am going to list the panel as it is on the agenda and then call upon a colleague of ours for introductions.

The panel is composed of Mr. Wayne Muri, Chief Engineer and Chief Administrative Officer, Missouri Highway and Transportation Department and President of the American Association of State Highway and Transportation Officials; Mr. Thomas Berry, Assistant Secretary for Finance and Administration, Florida Department of Transportation; and Mr. Howard Yerusalim, Secretary of Transportation, Pennsylvania Department of Transportation.

Does the gentleman from Missouri, Mr. Emerson, wish to be briefly recognized?

Mr. EMERSON. Yes, Mr. Chairman. It is my privilege to welcome this panel and, most especially, Mr. Muri, who is testifying in his capacity as President of the American Association of State Highway and Transportation Officials. He happens also to be the Chief Engineer and Chief Administrative Officer of the Missouri Department of State Highway and Transportation.

Mr. Chairman, as you know and as other senior members of this subcommittee know, Mr. Muri was an extremely valuable resource to us in the writing of the 1991 ISTEA. Mr. Muri is a very exemplary public official, and I think the American Association of State Highway and Transportation Officials is very fortunate to have him as its President at the current time, as we in Missouri are fortunate to have him as our head transportation official.

And I just want to welcome him here today and share with my colleagues on this subcommittee the high level of respect I have for the job he does and say that often public officials take a pretty good level of criticism, particularly unelected public officials. You know, we read about bureaucracy and what have you, but Mr. Muri is everything that a public servant should be, and it is good to have him on board and have him here with us today.

Mr. RAHALL. The Chair thanks the gentleman from Missouri and will also recognize a colleague of ours from Florida, Mr. Mica, for purposes of introduction as well.

Mr. MICA. Thank you so much, Mr. Chairman and members of the subcommittee. I am delighted to be here. I am also a member of the Public Works Committee, and it is my honor and privilege today to introduce Mr. Tom Barry.

Tom is here actually in place of our Secretary of Transportation, but Tom has over a decade of experience really on the line as the District Secretary from August 1989 to July of 1992 for the Florida Department of Transportation.

He has an outstanding reputation as a professional and a lot of hands-on experience, which I think can provide some good insight to this committee, particularly in light of the ISTEA legislation that is so important to Florida and to other parts of the Nation. So I am pleased to introduce today Tom Barry and welcome him to your subcommittee.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you. As previously stated, the Chair does have copies of all testimony, and without objection they will be made a part of the record as if actually read. And the witnesses may proceed as they desire.

TESTIMONY OF WAYNE MURI, CHIEF ENGINEER AND CHIEF ADMINISTRATIVE OFFICER, MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT, AND PRESIDENT, AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS; THOMAS BARRY, ASSISTANT SECRETARY FOR FINANCE AND ADMINISTRATION, FLORIDA DEPARTMENT OF TRANSPORTATION; AND HOWARD YERUSALIM, SECRETARY OF TRANSPORTATION, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Mr. MURI. Mr. Chairman, thank you very much.

My name is Wayne Muri of Missouri, and I especially appreciate being in the presence of our distinguished Congressman from southeast Missouri, Mr. Emerson, who has been quite a positive force in transportation, not only here in Washington but I can tell you certainly so in Missouri.

Thank you very much. I will make my comments as short as possible.

I come to you from a little bit of a unique situation this morning. Your timing couldn't be better for this hearing this morning. We just finished four days of meetings with the States, our AASHTO community. We had 46 States there, the heads of our member departments. I came in late last night from that meeting so all my comments are very current and also quite motivated, I can tell you.

From the comments this morning, I already noticed you are already touching some of the hot buttons, and I will touch some of those, too. Many are the same things that came from our conference. Congressman Petri, and Secretary Thompson of Wisconsin was there and very ably represented your State and had some good comments to offer, as did all States.

If I may, I will give you an overview from the national perspective of what we see and what has happened. Again, as Congress-

man Petri said, it is one thing to pass the law and something a little different maybe to implement fully the law, so I will bring to you some very candid comments on that. Thank you very much.

Howard Yerusalim, from Pennsylvania, will be very pleased particularly to give one State's perspective on clean air. We have some major concerns.

And Mr. Barry from Florida will talk particularly on the intermodal issue. We feel strongly about the intermodal issue, and he would like to share that with you.

A couple things first. Number one, since passage of ISTEA we have been very busy. We have hit the ground running. We have had a number of meetings. All States are deeply involved in this.

And I would like to pass out a tremendous compliment to the Federal agencies, believe it or not, from the States, particularly for the Federal Highway Administration. They have been there from day one, immediately upon the signing of the bill, and have held a number of meetings, meeting after meeting, to help us understand and to implement and to translate.

So from the States we tremendously compliment particularly that agency for what they have done, and the Federal Transit Agency has been great.

To say that there have not been major changes would be an understatement. I think you know there has been a tremendous change in the whole landscape out there in transportation, and this is truly a once in a generation bill as far as transportation.

Let me get right to the point. There are several things I want to share with you from what was said very strongly from those 46 States in our meeting. I don't think it is any surprise to you the full funding of ISTEA is very critical for a lot of reasons. I guess iced tea is my favorite drink, but I think we need a few tea leaves to make sure we have the right flavor there, and I want to tell you some of the reasons why.

I think some of the things have already been set out this morning, as far as some of our concerns. We at the States felt strongly about ISTEA and all the principles and the commitments that were made there, and from the States we made commitments based on the commitments in ISTEA.

Missouri was not the only one. We went back to our public and said we have a plan, we know where we are going, and we need the State's partnership to do this. And we passed in Missouri, which is not easy in any State, a fuel tax to do that to match the Federal funds.

Number two, we prepared the plans. We went to consultants, and we have the plans ready.

Number three, we met with the communities and the people and the public. We explained what they could expect. We built up perceptions of what could be done as far as ISTEA, and I think that was very, very important.

So we have done all those things. And, also, from a contracting standpoint I suppose you have heard this. The contractors also have made major commitments as far as what they have invested. So there has been a lot of commitments made there, and so it is very important that ISTEA is fully funded. Right or wrong we built all those perceptions.

Some of the questions this morning I think dealt with the MPOs. Yes, we are struggling in some States with the MPOs as far as implementation of ISTEA, and Missouri is one of those. We had great relations with the MPOs prior to ISTEA, and ISTEA was intended to build better relationships. But relationships are not that well now. And why? Without full funding of ISTEA, the perceptions were built that there was more funding and to cover more areas, and that is not true.

In Missouri, for example, our available funding for highway projects—because of the reduction, the obligation control, plus other funding restrictions, we have less dollars in Missouri, Federal funds, now than we did prior to ISTEA. That is a tremendous problem when you try to sit down and negotiate and discuss what is happening.

I would like to break and thank Congressman Mineta for coming in this morning.

So this is why we are deeply concerned. As you are probably aware, the funding in ISTEA, even full funding, is far short of what we need to maintain what we have. I think that is another illusion. To maintain what we have, we need about \$51 billion a year spent on capital, and with full funding of ISTEA we are at \$36 billion. If we want to improve our system, which a lot of people were led to believe, it would take \$67 billion in capital. We are only spending \$36 billion.

I guess I want to give you one more sidelight on this. I was one of those that worked with TRB and AASHTO, and took a look at what they have in Europe. And you might have heard different things about their highway system there, but, at least in my opinion, the highway system here is not as good as the one in Europe.

And when you look at that, there are a couple of facts. Number one, we are twice as efficient and productive as far as building highways in this country as they are in Europe.

Second, contrary to what you might have heard, our technology, especially now since SHRP, is much better than the technology in Europe.

What is the catch? They are investing at least four times what we are. And I think we need to tell all concerned what the real bottom line here is. So the funding issue, as you might expect, is a huge, huge issue as we look at this.

I would like to touch on a couple of other items, and one is your discussion on the National Highway System. This is very critical to us in the States. Basically, through the years, in our program in the States, because of the Federal funding, we concentrated on what? The Interstate. For what, about 30 years? We have a lot of major routes other than the Interstates that were neglected to a degree because of the thrust of the Federal funding.

And if you look at the States, if you do not think there is sentiment out there for a National Highway System, those areas that do not have the major highways to a degree are the have-nots across the country. Without major highways, they have not developed.

Another major issue I want you to consider is safety. Most of these highways that have been neglected are two-lane highways, and they are very dangerous. Converting them to four lanes, which

a National Highway System can do, reduces the number of fatalities by two-thirds. In our State, we can recover the investment in the National Highway System as far as the dual-lane highways solely from the savings of fatalities alone. So there is a huge sentiment out there for a National Highway System.

I will make an offer here. I heard the discussion this morning. We in the States will deliver our recommended National Highway System very close on schedule. This is the offer: If we deliver, we would appeal to Congress to also deliver a National Highway System to the program. So that is very, very important to us.

The other issue I want to touch on was brought up this morning is rubber—rubber and asphalt. I think the comments were very much on target. I guess I would give you a couple of factors which are in our testimony.

Number one, to fully implement what is in the Federal law on crumb rubber will cost us an additional \$1 billion upon full implementation in 1997. This, according to our experience, doubles the cost of our resurfacing. Doubles the cost. And I think those numbers were mentioned. If it doubles the cost, we will do half as much resurfacing and do half as many jobs related to this.

As we look, it is costing us one dollar per pound of tire to dispose of this by this method. We add all these things together and appeal to you to give us the opportunity, the flexibility to utilize these scrap tires in other ways.

Because the number of projects we have put down in our State—and I was over at one the other day, and it has only been down one year—our end product is much worse than our product without rubber, and we are out there patching potholes today after one year. So we are deeply concerned, as you might imagine, with this.

On motor fuel taxes, we would again appeal two things. Number one is that on the part going to the deficit, as you might imagine, there is a strong interest and concern from the States that this be utilized within the trust fund as you have suggested. We also have a great interest in as far as what additional taxes, particularly energy taxes that might be imposed, what impact this may have. We are concerned at the State level with that issue.

Mr. Chairman, those are some of the many issues that were discussed at our four-day meeting. We have much of this in our testimony, and we have submitted supplemental testimonies additional information as a result of our national meeting.

So, with that, I would like to thank this committee for holding this hearing. I think we are making great progress, but I would also say to you we have just begun. Thank you.

Mr. RAHALL. Thank you, Mr. Muri.

Before recognizing the other two panelists, the Chair will recognize the distinguished chair of our full committee, Mr. Mineta, for any comments, or any coughing, he would like to make.

The CHAIR. Mr. Chairman, let me just thank you for your leadership on this and the people who have been before us at today's hearing. I will ask questions of Mr. Muri at the proper time.

Mr. RAHALL. Let's hear from the other two panelists, if you would like, and then we will ask questions.

Mr. Barry? However you want, you may proceed as you desire.

Mr. YERUSALIM. I will gladly go next, Mr. Chairman.

I am Howard Yerusalim, Secretary of the Pennsylvania Department of Transportation and Vice President of AASHTO. And next year I will have big shoes to fill in following Wayne Muri in that position as President of AASHTO.

I would like to start off by recognizing Chairman Mineta and Congressman Shuster, who is testifying in another hearing and should be here shortly, for the fine job they did in shepherding ISTEA through the process. It was a difficult one, and we appreciate that.

And I would also like to recognize the Pennsylvania Congressional Delegation and Congressman Clinger, who was here a little earlier and had to leave.

I won't read my testimony. I will just summarize some of the points I consider of ultimate importance.

ISTEA has set new directions for us, and that was the intent. Change is here. It changes the way we do business. It recognizes the need for innovation, intelligent vehicle highway systems, perhaps magnetic levitation. It prioritizes the National Highway System, which is a key to mobility in this country. And I look forward to a successful effort in getting an approved National Highway System.

There is a new emphasis on intermodalism, which I strongly support. The ISTEA promotes flexibility. It ties ISTEA, though, to another law. There are two laws we have to react to. One is the Clean Air Act Amendments of 1990, in addition to the ISTEA legislation, and it continues and enhances a strong Federal-State-local partnership.

Let me interject here. In Pennsylvania, we have 14 metropolitan planning organizations. I think things are working perfectly well with those 14 metropolitan planning organizations. We do not have disagreements that go outside of our own meetings. We wind up with a consolidated position on our program. Pittsburgh was already cited, and I would say the same is true with Philadelphia, the other major metropolitan planning organization, and the other 12 throughout the State.

Governor Casey and I both made strong statements supporting ISTEA when it passed. We think it is a great bill in many ways, and it is paying dividends in Pennsylvania. Based on ISTEA and the fact we passed our own State tax, \$275 million a year for highways and \$150 million a year for transit, the first dedicated transit tax in the history of Pennsylvania, has allowed us to match all available ISTEA funds at full authorized levels, if they were appropriated.

In fact, I submitted a 12-year transportation program to our State Transportation Commission. We have had seven of eight public hearings. The last public hearing is tomorrow, and the recommended program includes \$29.3 billion worth of transportation improvements over a 12-year period, and it couldn't have happened without ISTEA.

We immediately jumped upon the opportunities of ISTEA. ISTEA was signed December 18, 1991 in Dallas, and between January and June of 1992 we actually bid \$618 million worth of highway and bridge construction projects. In the current year, based on current appropriations, and we can do better with the stimulus package,

we will bid more than \$1 billion worth of highway and bridge construction contracts. That means about 27,500 jobs in construction-related fields.

Also, in the transit area, we expect to have a transit capital program of one-half billion dollars this State fiscal year that ends June 30th, 1993, which is creating another 27,000 jobs. ISTEA has made this possible, and, as I mentioned, our new state tax helps that along.

But there are unfulfilled promises. I don't need to tell you that the authorization was \$20.5 billion approximately for highways, and \$18 billion was appropriated.

Transit is even a sadder story: \$3.8 billion appropriated versus \$5.2 billion authorized.

We have a system in Philadelphia, SEPTA the transit system, that has a \$4.5 billion backlog in infrastructure improvements, and we certainly need full implementation of Federal funds and the State capital funds that we are providing to SEPTA so that they can rebuild their infrastructure.

I applaud President Clinton and his stimulus package. Governor Casey talked about a stimulus package back when he ran for his first successful term. He ran three times, two times unsuccessfully before that. And he said if there were to be a slowdown in economy this would be a way to jump start the economy, and we started that several years ago. It includes highways, bridges, and transit but also water and sewer systems. We might have the biggest water and sewer program in the country. Billions of dollars have been committed.

But another dilemma—I see it as an opportunity—but a dilemma is the Clean Air Act and the amendments of 1990. First of all, I applaud the efforts of Congress in passing the Clean Air Act, and I think that cleaning up the environment is certainly very, very important to all of us. I know I have children and very shortly, I would hope, with a married son, that I will have grandchildren, and I think we need to leave them with an environment that they can live in in a safe way.

However, 35 States have received letters of intent to sanction with an 18-month clock that is moving. This is scary.

Also, some environmental groups have already sued Connecticut and Rhode Island and have threatened suits to other States. If sanctions occur, the promises of ISTEA certainly will be an unfulfilled dream.

Conformity analysis has caused quite a burden to our metropolitan planning organizations, but it is a necessary burden, so I don't question the need for that. However, there is a misconception, and the misconception is that transportation control measures, which certainly are good, are the answer to cleaning up our environment, and the proof in the pudding does not support that concept. And I hear it everywhere I go.

In San Francisco, they spent \$11 billion on transit improvements, HOV lanes and other traffic control improvements. For \$11 billion they got a reduction in carbon monoxide of less than 1 percent and a reduction in reactive organic gases for the ozone-producing smog-producing materials of less than one-tenth of 1 percent.

Others promote transit HOVs, park and ride, traffic flow improvements as the answer. I have a quote here that comes from EPA. It is from a fella by the name of Phil Lorang, Director of EPA's Emission Planning and Strategies Division. And here is what he said: "EPA believes that unless States want to adopt some pretty revolutionary travel pricing or rationing schemes, TCMs cannot play a very significant role in most attainment strategies. * * * So it is not worthwhile to impose an EPA process for estimating TCM benefits."

That does not mean I do not fully support traffic control measures, because I think they are good and necessary. They provide mobility, and they certainly reduce congestion. However, the most effective measures with respect to cleaning up the environment are cleaner vehicles, cleaner fuels, perhaps alternative fuels, and the enhanced inspection and maintenance programs that we are mandated in many parts of the country to implement.

I am proud our State legislature did, in fact, bite the bullet and pass the legislation required for the enhanced inspection and maintenance program. We certainly need a balance between clean air, mobility and economic vitality. I think that we have to find a way to do that.

Flexibility is a key to the ISTEA and flexibility in transferring between highway funds to other highway categories and transit funds to other transit categories. We have flexed in Pennsylvania over \$200 million from highway to highway. However, portions of the transfer are still being processed. We have a safety and mobility program for which we plan to flex \$27 million for transit and transit-related programs.

If the economic stimulus package passes, I intend to flex one quarter of that funding on the highway side to transit—\$30 million out of \$122 million. But it was quite interesting. I wanted to use congestion mitigation and air quality funds as I flexed that money, and we had some infrastructure issues that we thought were very important. But the answer we got back was the only thing we can do, without lengthy analysis of the clean air impact, was buy buses or buy railcars. Newer vehicles are cleaner than older vehicles. Therefore, they preclude improving air quality.

But the other things necessary in the transportation area don't appear to be available for congestion and air quality mitigation funds, and I am not sure that was the intent of Congress when they passed this bill.

In addition, we have what I think is one of the best intermodal projects in the country. We have a new airport in Pittsburgh, and we have a downtown and a bridge that is going to have to be rehabilitated, closed for five months in one direction in one year and the other direction in the other year. It is a double-tier bridge, and we will strangle that city if we don't do something. So we are planning a busway which will be an HOV-way during the reconstruction of that bridge to provide the mobility so that we can get to the City of Pittsburgh from the airport.

It is a \$250 million project. The Department of Transportation has committed at least half of that funding, and much of that will be flexible funding.

We are also working with SEPTA, our Philadelphia system, on flexible funding.

The new planning requirements—I heard your questions to Dean Carlson—they are onerous, and I won't get into a lot of detail except to say I think in working with the Federal Highway Administration and the Federal Transit Administration we can solve our problems. We have been doing it for years, and we will continue to do that.

But there is something in the planning requirements that needs a new definition, and it is called financial constraint. It means your plan has to be financially constrained, but it can be interpreted to mean that your plan can only include a dollar for each dollar that is estimated to be available. If you do that, I would submit States are not going to be able to use their money.

Because what happens is you might go into a program with five projects at the top of the funnel, but when you get to the bottom end, because of different requirements and different things that slow down projects, you might only have three or four. So I think financial constraint has to be evaluated in a reasonable way, perhaps some amount of additional funding allowed to be in that program, even though it is a financially constrained program.

Another issue is the consolidation of categories in ISTEA, and that is certainly a bonus. We were promised, we all were, that there were five basic categories: interstate maintenance, National Highway System, congestion mitigation and air quality, surface transportation program and the bridge program. That is five categories.

I have with me today a report that the Federal Highway Administration provides to our Department in Pennsylvania each month on the status of each of our funding categories. Those five categories have generated 69 separate line items that we have to follow. We have other categories with some special funding that we have in Pennsylvania. We have 101 categories of funding that we have to evaluate. The surface transportation program that started out as one item with all the set-asides is 20 items in Pennsylvania.

Yesterday, at AASHTO, someone talked about these numbers, so I took this list and held it up. I am 5'7", and when I stand up—and Wayne is laughing because he was there—this list is taller than I am. I submit that that is not simplicity. That makes it much more difficult to run our program.

Mr. RAHALL. Would you submit that to the subcommittee, please?

Mr. YERUSALIM. In fact, I will even—it is even—

Mr. RAHALL. You are going to hold it up?

The CHAIR. Chairman Rahall wants to measure himself.

Mr. YERUSALIM. Bud, I have checked, and you will tower over this.

[List referred to follows:]

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
STATUS OF FUNDS - PENNSYLVANIA
AS OF 03/31/93

V LF07M10A
03/31/93

From: Howard Yousalam

FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	POSSIBLE LAPSE END OF FISCAL YEAR		
					1993	1994	1996
FUNDS SUBJECT TO OBLIG. LIM.							

APPORTIONED FUNDS							

INTER 56 CONSTR	042	92,530,727	83,237,515	9,293,212			
INTERSTATE 4R	044	562,212	669,141-	1,231,353	1,231,353		8,952,355
INTER MAINT	04H	70,226,854	70,341,413	61,389,058			
INTERSTATE TRANSFER	177						
WIDENING AREA 220		77,569					
INTST. TRFR. LAPSE				77,569		77,569	

CONSOL. PRIMARY	010	521,717	122,896	398,823		398,823	
RURAL SECONDARY	075	321,359	114,798	204,601		204,601	
NHS QUALITY	315	135,284,303	128,001,752	7,282,551			7,282,551
AIR QUALITY	320	106,357,688	2,438,663	103,919,025			58,367,097
HAZARD ELIMIN	141	14,197,953	3,823,031	10,374,922			9,639,806
HPR-22	081	10,111,871	5,584,737	9,639,806			3,263,469
MAN. 25% STY HPR	086	15,224,543	1,556,800	3,263,469			4,972,619
METRO PLNG	082	4,820,269	1,556,800	3,263,469			
METRO PLAN-1X	085	81,991	86,365-	170,356		170,356	
BR REPL-SPECIAL	115	5,989,775	7,959,019	2,966,400	4,972,619		
URB SVS ATTRIB	M36	43,724,221	2,825,233	40,898,988			
URB SVS-NON-ATR	M32	4,311	18,222-	22,533			
PR-URBAN SVS	M08		1-		1		
URBAN SYSTEM LAPSE					7,307,963	33,613,559	
BR REPL-15% OFF	117	37,989,924	49,672,797	6,799,108	43,073,689		
BR REPL-65% ON	118	164,623,007	164,621,595	54,197,043	110,434,552		
BR REPL-OFF/ON	114	50,653,232	50,655,592	7,713,378	42,936,214		
BRIDGE REPL. LAPSE							

STP-ENHANCE	338	9,570,771	16,215,818	14,215,818			196,444,455
STP-URBAN	33C	26,437,590	35,898,051	2,151,460	33,746,451	6,645,047	9,570,771
STP-ANY AREA	33D	76,467,670	76,873,973	59,647,553	17,226,420	9,308,661	24,437,590
STP-NON URBAN	33E	23,416,266	24,907,394	5,236,315	19,671,039		17,226,420
STP R/H DEVICE	33M	2,095,675	3,112,783	616,500	2,496,283	400,608	19,671,039
STP R/H HAZ. EL	33N	2,095,674	3,033,619	1,089,253	1,944,366		2,095,675
STP-HAZ ELIM	33P	5,379,422	6,954,985	3,981,050	2,973,935		1,944,366
DON. ST. BON. ST. F	35A	16,495,811	16,495,811	2,603,616	13,892,195		2,973,935
DONOR-UNORGANIZED	35B	3,829,062	3,829,062	3,829,062	3,829,062		
DONOR- < 200K	35C	3,669,033	3,669,033	3,669,033	3,669,033		

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
STATUS OF FUNDS - PENNSYLVANIA
AS OF 03/31/93

FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	POSSIBLE LAPSE END OF FISCAL YEAR		
					1993	1994	1995
PROTECTIVE DEV ELIM OF HAZARDS RAIL-HWY LAPSE	139 138	226,137 240,779	221,892 238,743	4,245 2,036		6,281	
TOTAL APPORTIONED FUNDS FORMULA OBLIG. LIM.	704,108,445 580,348,954	946,587,329	436,589,403 436,589,403	509,997,926 143,759,551	8,539,316	44,846,111	59,926,444
							366,002,148

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U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
STATUS OF FUNDS - PENNSYLVANIA
AS OF 03/31/93

FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	1993	1994	1995	1996
ALLOCATED FUNDS								
DISCRETIONARY FUNDS								
BR REPL-DISCRET	119							
INTERSTATE TRANSFER	178							
WITHORAWL AREA 220		166,686	1,063,066-	1,063,066				
TOTAL DISCRET. FUNDS		166,686	1,063,066-	1,229,752				166,686
RELATED OBLIG. LIM.		134,182	1,063,066-	1,197,248				166,686
ALLOCATED FUNDS--OTHER								
DEMO PROJECTS	309	7,166,887	159,032	7,007,855				
STRAT. HWY RSCH.	380	30,000		30,000				
IVHS-ACTV	326	305,000		305,000				
HWY TAX EVASION	334	50,000		50,000				
TRANSP. ASST. 50%	374	110,000		110,000				
LOCAL TAP	948	44,000		44,000				
PUB. LDS. FY92	18E		12-	12				
TOTAL ALLOCATED--OTHER		509,000	159,020	7,546,867				
RELATED OBLIG. LIM.		740,837	159,020	581,817				
EXEMPT FUNDS								
EMER RELIEF	098							
M.A.-STATE FLEX	34A	25,019,697	169,834-	169,934				
MIN ALLOC URBAN	34B	5,807,655	8,273,809	16,745,888				
M.A. < 200K	34C	4,768,797	1,16,570	4,647,085				
MIN. ALLOC. LS SK	34D	796,138	269,600	4,499,197				
DEMO PROJECTS	307			796,138				
GAP CL DEMO-PA	228			11,679,728				
HIGH COST BRIDG	360			2,887-				
HL PRI CORR NHS	362	4,661,708	6,600,000	6,600,000				
INNOV. PROJUS	367	37,051,256	52,456,800	52,456,800				
PRG. INTERMODAL	368	57,631,764	80,984,363	71,471,126				
CONG. RELIEF PRO	361	10,087,937	11,023,465	1,385,439				
RURAL ACCESS	365	8,074,078	11,431,200	11,431,200				
URBAN ACC MOBIL	366	44,565,930	56,757,297	7,431,871				
		2,338,313	2,752,336	2,752,336				
TOTAL EXEMPT FUNDS		200,803,273	270,342,530	242,215,771				

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STATUS OF FUNDS - PENNSYLVANIA
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FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	POSSIBLE LAPSE END OF FISCAL YEAR		
					1993	1994	1995
TOTAL FED-AID ACCT FUNDS	905,587,404	1,224,802,432	463,812,116	760,990,316	8,539,316	45,012,797	59,926,444
GRAND TOTAL OBLIG. LIM.	581,223,973		435,685,357	145,538,616			366,002,148

FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	POSSIBLE LAPSE END OF FISCAL YEAR	
					1993	1995
OTHER FUNDS						

INTERSTATE TRANSFER	590	1				
AREA 220						
HITHORAMAL TRANSFER	823					
MTK CAR GRANT	212	2,651,278	2,599,278	61,000		
MIL CONSTR USAF	758	13,635		13,635	13,635	
APPALACHIA HWYS	641	9,047		9,047		
APPALACHIA HWYS	642	125,079	381,781-	506,860		
APPALACHIAN DEV	795	9,428,740	5,382,060	4,046,680		
APPALACHIA HWYS	642	5,429		5,429		
APPALACH LOC ACC	796	2,883,929	564,087	2,319,842		
CLBING/HWY SFT	342	3,840,000		3,840,000		
CLBING LN SFTY	502	15,567,649	900,000	14,667,649		
DEVELOPMENT	518	15,840,000		15,840,000		
HWY DEMO PROJ	341	640,000		640,000		
PA RECON DEMO	343	4,923,978	264,000	4,659,978		
PENN STATE DEMO	515	6,400,000		6,400,000		
MINORITY BUS	12C		2,000-	2,000-		
EBENS BYP DEMO	515	127		127		
PA TOLL RD DEMO	344	3,200,000		3,200,000		
FTA FUNDED PROJ	252	127,500		127,500		
NAT'L REC TRAIL	386	231,837		231,837		
HWY DEMO PROJ.	528	17,439,000	1,085,515	16,353,485		
PENNA REC DEMO	526	5,338,849	2,861,635-	8,200,484		
PENNA. TOLL RD	527		1,269,789-	1,269,789		
AF TRF DOT	74E	24		24		
MIL CONST-ARMY	756	461,131	76,932	384,199		
HWY DEMO. P.E.	519	3,021,148	104,000	2,917,148		
TOTAL OTHER FUNDS		42,698,615	91,508,381	6,451,667	13,635	
LAPSED FUNDS						

PVMT HRK DEMO	140		68,427-	68,427		
PRIMARY CONSTR	012		8,501-	8,501		
SOS RDS CONST	680		2,928-	2,928		
URBAN EXTENSION	032		125,711-	125,711		
TOTAL LAPSED FUNDS			205,567-	205,567		
TOTAL ALL PROGRAMS		949,286,019	1,316,310,813	470,058,216	8,539,316	45,026,432
					59,926,444	366,002,148

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STATUS OF FUNDS - PENNSYLVANIA
AS OF 03/31/93

POSSIBLE LAPSE END OF FISCAL YEAR
1993 1994 1995 1996

FY-1993
APPOR-
TIONMENT

FUND

AVAILABLE
FY-1993

OBLIGATIONS
FY-TO-DATE

UNOBLIGATED
BALANCE

ADVANCE CONSTRUCTION

(PRIOR AMOUNTS) (CHANGES) (TOTAL)

ACI 008
ACI 4-R 007
ADV CONST 14R S15

122,377,894
86,521,236
208,899,130

65,864,741-
19,328,045
1,990,704

56,533,153
105,849,281
1,990,704

TOTAL ADVANCE CONST.

44,1525,992-

164,373,138

URBAN SYSTEMS (SUBSIDIARY ACCOUNTS)

URBAN ATTRIBUTABLE M36

ALT-BETH-EAS NJ
HARRISBURG
PHILADELPIA NJ
PITTSBURGH
SCRAN-MILKES-BA
TRENTON (NJ)
SCRANTON
MILKES-BARRE
TOTAL URBAN ATTRIB.

1,439,574
1,853,925
18,701,032
19,526,877
46,296
2,003,028
70,046
83,444
43,726,222

336,357
50,514
2,104,062
291,753
42,1547
2,003,028
70,046
83,444
2,825,233

1,103,217
1,803,411
16,596,970
19,235,124
5,749
2,003,028
70,046
83,444
40,898,989

URB SYS-NON-ATR M32

4,311

18,222-

22,533

TOTAL URBAN SYSTEMS

43,728,533

2,807,011

40,921,522

STP URBANIZED

STP URBANIZED 33C

ALT-BETH-EAS NJ
HARRISBURG
PHILADELPIA NJ
PITTSBURGH
SCRAN-MILKES-BA
TRENTON (NJ)
WILMINGTON (PA)

1,553,098
1,179,684
13,199,619
6,761,221
1,563,594
172,806
7,568

1,906,874
1,752,228
19,605,879
10,042,690
2,322,464
256,675
11,241

1,906,874
1,632,228
19,605,879
8,291,090
2,042,464
256,675
11,241

TOTAL STP URBANIZED

24,437,590

35,898,051

33,746,451

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STATUS OF FUNDS - PENNSYLVANIA
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FUND	FY-1993 APPOR- TIONMENT	AVAILABLE FY-1993	OBLIGATIONS FY-TO-DATE	UNOBLIGATED BALANCE	POSSIBLE LAPSE END OF FISCAL YEAR		
					1993	1994	1995 1996
MINIMUM ALLOCATION URBANIZED							

M. A. URBANIZED							
ALT-BETH-EAS NJ	369,098	369,098	39,013	330,085			
HARRISBURG	280,355	280,355		280,355			
PHILADELPIA NJ	3,136,923	3,136,923		3,136,923			
PITTSBURGH	1,606,821	1,606,821	1,121,557	485,264			
SCRAN-WILKES-BA	371,592	371,592		371,592			
TRENTON (NJ)	41,068	41,068		41,068			
WILMINGTON (PA)	1,798	1,798		1,798			
TOTAL M.A. URBANIZED	5,807,655	5,807,655	1,160,570	4,647,085			
DONOR STATE BONUS URBANIZED							

DONOR STATE URBANIZED							
ALT-BETH-EAS NJ	243,351	243,351		243,351			
HARRISBURG	184,842	184,842		184,842			
PHILADELPIA NJ	2,068,214	2,068,214		2,068,214			
PITTSBURGH	1,059,398	1,059,398		1,059,398			
SCRAN-WILKES-BA	244,995	244,995		244,995			
TRENTON (NJ)	27,076	27,076		27,076			
WILMINGTON (PA)	1,186	1,186		1,186			
TOT. DONOR STATE URBANIZED	3,829,062	3,829,062		3,829,062			
FUNDS CONTROLLED BY DIRECT FEDERAL							

PARK RDS-ALLOC	180	1,005,592		1,005,592			
FOR. HWYS, FY92	19A	50,000		50,000			
TOTAL DIRECT FEDERAL		1,055,592		1,055,592			

Mr. YERUSALIM. But it is interesting—what we thought would be simplicity and really a consolidation of categories has done just the opposite.

Requirements for long-range plans for transportation improvement programs in the metropolitan areas, for Statewide transportation improvement programs which address and transportation improvements for the rest of the State that are not covered by metropolitan planning organizations, they are all good, but we need more flexibility in developing those programs.

But let me again repeat that we do not have problems with our 14 metropolitan planning organizations. We come out of our program and our meetings with a program that we can both support.

The timetables for the management systems, I heard the questions to Dean Carlson, my good friend, and we think they are a little onerous. Some of the systems are easier because States had a head start. In Pennsylvania, the bridge management system, the pavement management system, we are basically there. But congestion management systems and the intermodal system and the transit systems are going to be a little more difficult to implement and more difficult to meet those requirements.

ISTEA talks about partners, and I am quite proud of our partners. I will mention just two.

In the enhancement area, we formed an advisory committee that consists of the groups that represent the disciplines that are included, and I basically have turned over the program of the enhancement projects to that advisory committee. And it includes the Bicycle Federation, the Scenic America and many other environmental organizations. And it has worked.

I was shocked. I thought when they had their different disciplines, four different factors, they had subteams, that they would come in fighting with each other. But I am amazed that they programmed 77 projects for \$47 million, which is about 60 percent of the money we will have over the six-year period. So they have programmed 60 percent of the money, and they have had full, unanimous approval of that enhancement program.

The other partnership I think is even more important is the Surface Transportation Policy Project, which will be testifying later today. They are certainly a player in this game, and I find them to be a positive player, I read their testimony, and I am not sure it sounds that way in their testimony, but we have agreed we will partner with them. We don't want to be pulling at each other. We want to pull together.

I have signed a Memorandum of Understanding, and we, as I sit here today, are full partners, and they will be involved. They will be involved in six areas: transportations enhancements, scenic byways, congestion management, system development, which I think is important—that is one of the management systems—congestion mitigation and air quality concepts, long-range planning and land use planning.

We think they are a key player, and we want to work together with them to do the best to move people and goods in the Commonwealth of Pennsylvania and provide the movements that tie in with our partners in other States.

So the partnerships in ISTEA certainly are working in Pennsylvania, and there are many other partnerships that I won't mention that are also working.

In conclusion, ISTEA has taught us a lot, but we have a long way to go. We need flexibility with respect to the Clean Air Act Amendments. We need flexibility in the planning and the management systems. We need to expand even further the strong Federal, State and local partnerships that we have. We need full funding of ISTEA, which is a key to the flexibility provisions. As long as we have less than full funding, we are going to wind up with people pulling at each other between the transit and highway communities. I think they have to work together. And we need early passage of the National Highway System, which I think is key to the mobility of this country and to the economy.

I look forward to working with Congress as we further implement ISTEA, and I certainly would be ready to answer any questions at the appropriate time and come to Washington any time you may wish to discuss these issues with me.

Thank you very much.

Mr. RAHALL. Thank you.

Before recognizing our final panelist, the Chair will recognize the distinguished Ranking Minority Member of our full committee, the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much Mr. Chairman. And I want to welcome the Secretary of Transportation from Pennsylvania to the committee. We have worked and labored long and hard together in the transportation vineyard, and it is good to see you here, Howard.

I would tell the committee that Secretary Yerusolim is an absolutely outstanding Secretary of Transportation. He and Governor Casey have been very supportive of our transportation efforts in Pennsylvania and supportive of what we have tried to do and what this committee has tried to do.

So I am just delighted to see you here today, Mr. Secretary, and give you the highest accolade.

Mr. YERUSALIM. Thank you very much.

Mr. RAHALL. Mr. Barry?

Mr. BARRY. Thank you very much, Mr. Chairman, Chairman Mineta and Congressman Mica for that introduction. I am pleased to be here today to appear before the subcommittee to present Florida's views on the implementation of ISTEA.

Unfortunately, Secretary Watts chose the traditional highway mode of travel to return from the Missouri meetings, and he is on his way back to Tallahassee, so he sends his regards.

As Wayne indicated in his introduction, part of the reason that we asked to be able to testify today is we would like to share some of the successes we have had implementing some of the sections of ISTEA, particularly in the intermodal area. And as a follow-up on that, we would like to briefly touch upon a few areas we would like to discuss and promote discussion on how to build momentum of ISTEA, to take what we felt it was at its beginning and put that into place in its implementation.

Obviously, Florida has a vital interest in ISTEA and its intermodal provisions. The fourth largest State, continuing to rank in

the top five in population growth both in numbers and percentages, we face a challenge of moving not only our people and goods but also the 40 million visitors that come to our State each year.

Before ISTEA became law but while the discussions were taking place, it became apparent to us in Florida that simply building more highways, building our way out of the congestion of the 1970s and 1980s, was not the answer to our State's transportation needs. Quite simply, we had no choice but to recognize we needed an innovative mix of highway and nonhighway transportation uses in order to combat the growth of our State, with—roughly 900 new people a day move into the State of Florida into varying regions.

I won't go into great detail on the intermodal activities. There is sufficient amount of detail in the written testimony we have had provided. But I would touch on a few ongoing efforts.

Some of the provisions of ISTEA that the Department has quickly seized on and implemented includes our participation in the grants program for intermodal development and rail crossing hazard elimination—both sections of ISTEA—which allow States to apply for specific grants before petitions have been approved by the Federal highway for the soft match program provided for in ISTEA which maximize the utilization of Federal funding.

We, too, are players in the congestion mitigation game. I believe the gentleman from New York mentioned concerns about how the monies were allocated by some of the States. In Florida, what we did was just take the national formula, how the monies were allocated to the States, and then further allocate that to the specific nonattainment areas in Florida so they, in fact, control the project selection for the funding in their particular area.

We have moved a little slowly in terms of the flexibility in terms of transferring funding to transit. We have purchased or will be purchasing some buses with our congestion mitigation funds. Some of the local metropolitan planning organizations have chosen to utilize those funds for transit purposes, so we see a positive there.

To echo Secretary Yerusolim's comments, we are blessed, depending on how you look at it, with 25 MPOs in Florida, 11 of which are the greater of the 200,000 variety. We were well positioned for ISTEA. Our state laws require heavy public input and coordination with our MPOs. We established a membership, with the state department being a member, nonvoting. But the predominant membership of our MPOs is made up of local elected officials to put the decision-making in its appropriate place for our urban areas in Florida.

In terms of some of the intermodal activities, we are involved in rail passenger initiatives, everything from commuter rail authorities to the recent initiation you may have seen in some of the news accounts of the Sunset Limited, the first truly intercontinental rail passenger service in the history of the country. That was initiated a few weeks ago. I had the privilege of riding on that train through Florida, and it was certainly a worthwhile experience.

Our legislature, again anticipating the thinking at the Federal level in 1990, enacted our large transportation act that has been referred to a number of times here this morning by the various States. We enacted a funding increase. We also established certain intermodal programs that allow us to expend funding on traditional

highway monies on ports, intermodal access to the ports and airports, both rail and highway type. And we expect to spend over \$500 million in that area in the next five years in Florida.

Also, I think the Pittsburgh airport was mentioned. Certainly, although not particularly under the purview of this committee, aviation is a strong component of our intermodalism in Florida and throughout the country. We move over 80 million people a year through our airports' terminals, and almost a quarter of all the international cargo that goes through Florida is transferred through our international airport hubs.

Before I begin to comment on some of the improvements we would like to suggest for ISTEA itself, I would like to make what I consider to be a very important point in my presentation. It is obviously a well-established matter of record that the State of Florida, as a whole, is not completely satisfied with the highway allocation formulas in ISTEA, but I want to make sure before I go any further that there is no intention on my part to discuss that nor are allocation formulas involved in any of the suggestions we would like to make today.

The bottom line to what we want to propose today are, quite simply, recommendations based upon our desire after 15 months of implementation to improve that implementation and provide greater program efficiency, which we believe this committee and other Members had in mind when they passed the original legislation.

Chairman Rahall, I had the opportunity to read your opening comments from yesterday, which I think were very much on point in the areas where you reference the simplification of the surface transportation program and the partnership enhancements of State, Federal and local government entities. And in that area I want to focus on those particular areas in making recommendations for Florida.

Clearly, the ability to transfer highway funding to transit, the ability to mix toll and non-toll Federal funds, the leveling of the playing field as it relates to ratios are outstanding concepts. Some of the added requirements, however, in terms of additional administrative efforts, paperwork and, frankly, the fact that Title 23—which is really our implementing bible—was not sufficiently modified to put all the concepts of ISTEA in place, have limited those flexibilities right there.

I am, fortunately, six feet four, so I can actually tower over Pennsylvania's report, but we, too, would like to present to the Chairman a graphic illustration of the pre- and post-ISTEA.

Our numbers are nearly as large a difference. Prior to ISTEA, Florida dealt with 16 specific funding categories in what would be considered the surface area, and we now are up to 55 in that particular area. So Mr. Chairman, at the end, I want to submit that for your use.

We think, again, that ISTEA should be viewed as a positive step forward. We need to be continuing to work with Federal highway and this committee to make it more efficient. The flexibility area that was mentioned—again, we would like to suggest, for example, in the state transportation improvement area, the program is required by the legislation itself and then implemented by Federal highway. We want consideration to be given to allow a State to pe-

tition the Federal Highway Administration to demonstrate they have a process in place that, in fact, equals or exceeds the intent of the legislation as it was passed.

In Florida, for example, we have a very specific public involvement coordination through the MPO process laid out in our Florida statutes that requires a series of steps, comment, involvement, review, objection and final approval by our legislature. We would submit that that actually goes beyond or at least equals some of the intent of the coordination process in ISTEA and would like to see the opportunity to use a process, for example the phrase certification acceptance comes to mind, that we use on the technical engineering side perhaps for the planning process.

In terms of the relationships between Federal, State, and local governments, certainly we in Florida agree that the Federal role of policy and decision-making on environmental protection, energy and other areas are not in question. As we have moved to implement some of the programs where the programs have been delegated to the States to use, is where we've seen some of the problems in that implementation.

We see a great need for decentralization of decision-making and project approvals to the lowest possible level wherever feasible. We also think oversight of the program could be simplified, less time-consuming, utilizing certifications and project sampling, with the ultimate goal certainly being the assurance that funds were expended properly as set out by the bill.

We would like to see an effort and we would certainly like to participate in an effort to restructure those programs and make it more efficient to utilize the Federal funds in a timely manner.

In conclusion, we concur in Florida with the other speakers and certainly we believe that ISTEA is a new beginning and we believe it's the right thinking at the right time. As it has been said many times yesterday and also in the presentations today, with passage of legislation of this order of magnitude, obviously, there are some issues that need to be worked out and we in Florida would like to be a partner in that particular effort.

And in final conclusion, I would like to cite from Title XXIII a passage that has probably been in there for a good long time and we would like to start with that passage as we work with this subcommittee and others, and that is the statement that "it's the national policy to encourage substantial minimization of paperwork and interagency decision procedures."

We would like to assist this committee in putting that into place, and I thank you for the opportunity to present our testimony this morning.

Mr. RAHALL. Thank you, gentlemen.

The Chair will recognize the Chairman of our full committee, Chairman Mineta.

The CHAIR. Thank you very much, Mr. Chairman. Let me first of all thank the panel for their presentation. Mr. Muri, I would like to ask you about this whole issue of the recycled rubber because that was put in at the behest, of course, of Senator Chafee who wanted to see if there was some way to get rid of, as I recall, 2 million tires a year, and that the crumb rubber approach would be a way to deal with that issue.

We also, as I recall, had some ways to relieve States of getting out from under the requirement of the crumb rubber or the recycled rubber aspects of it. I am wondering whether or not the States are going to be exercising their—those prerogatives under ISTEA to excuse themselves of the requirements of recycled rubber.

Mr. MURI. It's a question I am not sure I can answer. We do have several reports on the State's position, which I think is part of what we have submitted. If not, we will submit that.

The CHAIR. I am not sure——

Mr. MURI. I am not sure——

The CHAIR. I am not sure that we have to reconsider Section 1038 given some of the avenues, you know, whether it's OSHA related or whether it's other. You've indicated that some of the places where you've used recycled rubber, that within a year now the pot-holes have come up.

And as I recall, under ISTEA there are ways for the States to get out from under the recycled rubber requirements. So I'm not sure that we have to revisit Section 1038. It seems to me the States might be able to just exercise the process in order to excuse themselves from recycled rubber. But again, we will take a look at it and I would like to talk to you about that portion of it.

Let me just very quickly turn to Mr. Barry from the Florida Department of Transportation. I am sorry, frankly, that your secretary is not here. And I am surprised that in your testimony you didn't mention anything about formulas, especially given the fact that you are the Assistant Secretary for Finance and Administration and the Florida DOT has always been concerned during the consideration of ISTEA, and subsequent to that, about the formula that was adopted in the ISTEA program.

And so I'm surprised, frankly, that you didn't touch on that. Any reason why you didn't touch on that?

Mr. BARRY. Mr. Chairman, I've had considerable conversation with Secretary Watts on the particular issue. You know, we believe there is a time and a place for the discussion about how funds are allocated to the States.

In essence that time, you know, while a discussion continues, passed us when the legislation was passed in 1991. This particular subcommittee we believe is more concerned with the substantive portions of ISTEA and therefore we chose not to pursue it as an issue.

The CHAIR. Yes, but then you've never decided as to when and where that is going to be the proper time and place because Florida DOT continues, as recently as a month ago as I recall, to keep complaining about that. And as far as I am concerned, the proper time and place was when we considered ISTEA and we had people on this Committee, whether it was Pete Peterson or Mr. Ballantine and others who were concerned about donor States, including the State of California, and we constantly get it from Department of Transportation in Florida as recently as a month ago, in testimony before the Appropriations Committee.

Frankly, the fact that you didn't have it in here surprises me, because you folks don't have any, it seems to me, grace about when and where you are going to pick your battles, and you continue. And so I'm surprised that in your testimony here, especially as As-

sistant Secretary for Finance and Administration for Florida DOT, that you didn't include it in here. But I am sick and tired of listening to Florida DOT about their complaints about the formula.

And I want you to convey that back to the secretary, including your representatives here in Washington, DC, as well.

Mr. BARRY. Yes, sir.

The CHAIR. Thank you. Thank you, Mr. Chairman.

Mr. RAHALL. Mr. Muri, let me ask you a question, because you heard throughout this morning that we've been extremely interested in seeing the extent to which highway funds are being transferred to transit projects. As a point of clarification, I want to refer to page five of your submitted testimony. There it is noted that 23 States have obligated some \$436 million for transit use under ISTEA's flexibility provisions, including \$54.6 million in STP funds, \$277 million in CMAQ moneys, and \$436 million from other programs.

Now, obviously adding those numbers up, you exceed the \$460 million total figure, so I'm really seeking a clarification of this. Do you see where I'm adding up those numbers?

Mr. MURI. Yes. Let us again review those numbers and report back to the committee of the total of those numbers in the summary.

Mr. RAHALL. All right. And I also have a question about other programs, where you say \$436 million from other programs. What are other programs? Would that be NHS?

Mr. MURI. Could be a number of other programs. Whether NHS is one of those, I am not sure, but across the board of a number of programs which are transferable and maybe Pennsylvania can address that.

Mr. RAHALL. All right.

Mr. YERUSALIM. Yes, Mr. Chairman, let me talk about that. One bridge plan that I talked about earlier involves a major bridge to get into the City of Pittsburgh. And we intend to possibly use congestion mitigation and air quality funds, which have already been discussed, but bridge funds would also be eligible.

Bridge funds are not eligible for a transit bridge that doesn't serve highway purposes, but in this case we will allow high-occupancy vehicles on that bridge. So we are strongly investigating using the highway bridge fund for that bridge, which is over \$50 million just for that one bridge.

Mr. RAHALL. Right. I would appreciate a clarification of those numbers.

Mr. MURI. Those numbers did not compute, as they say.

Mr. RAHALL. No, I don't think so. I am going to turn to the gentleman from Wisconsin, Mr. Petri.

The gentleman from New York, Mr. Nadler? The gentleman from Missouri, Mr. Emerson?

Mr. EMERSON. Mr. Chairman, I don't have any extensive questions, but I am curious about the Clean Air Act compliance issue. And I wonder, you know, as we're all for the Clean Air Act compliance just as we are all for full funding of ISTEA, and I wonder if realistically, if we're—if maybe there ought to be a different kind of a timetable for Clean Air Act compliance in order that we may better utilize limited resources.

I mean are we spending an awful lot more for Clean Air Act compliance today than might be necessary down the road? Are we getting—I mean is a problem the technology that we need is just not available and we're having to pay a higher cost to meet certain standards right now? Would there be some benefit in extending deadlines for Clean Air Act compliance that would make some cost effective good sense?

Mr. MURI. That is a very good question. I would like to comment and maybe ask the gentleman from Pennsylvania. Number one, I think we need to recognize we are on a major collision course I think with the public, some public credibility on the Clean Air Act. Number two, the time frames are very frightening to us.

Mr. EMERSON. Do you consider them unrealistic?

Mr. MURI. Yes, I do. In the nonattainment areas, I think we all want to recognize in the nonattainment areas, the clock is running and that clock, the first alarm that goes off, will be this fall in November for the MPOs and the nonattainment areas, the plan must be submitted as how we will comply. That is a short time frame.

By next year, that is next November of 1994, those laws, those regulations, if I understand correctly, must be in place and in November of 1994 to reinforce that plan to achieve 15 percent reductions from 1990 to, what is it, 1996.

So those time frames are going to be very, very difficult and will cause a lot of pain. Plus, and your point is a very good one, a number of items which Secretary Yerusolim mentioned that we're looking at high expenditure actually results in the extremely low amount of reduction in our pollution. And I think we need to take a very serious look at that.

Mr. EMERSON. I don't think anyone is seriously suggesting that we should not ultimately meet the standards of the Clean Air Act. But I think there is a very good question as to whether the time frame that we have established is an efficacious one, and if we couldn't stretch the limited resources further if we moved it on out there somewhat and permitted better technology to come on stream in an orderly way, rather than on an emergency basis.

And I would encourage this subcommittee to consider that general subject area. I think it's an important one.

Mr. MURI. I wish to also encourage you to consider that.

Mr. YERUSALIM. May I add to that, Mr. Emerson? The models as they are there today, we're not sure that they give the right answers. And the type things we do may or may not have an impact. So until we're sure that the models tell us what we're really doing to clean up the air, we don't know if all these efforts that we're making are doing what was intended through them.

So that is one reason that until we're sure that those models are accurate, that we may want to wait. So we might be doing better than the models show us. The models are still questionable.

The other thing is the conformity regulations are late and they are causing a problem in us meeting them. I know in Pennsylvania, our Department of Environmental Resources is a true partner to the Department of Transportation. We are not pulling against each other. We have interagency committees, we're working with them. The Governor has given very, very strong support. He's basically

said you tell me you need more people, I will give you more people. You tell me you need more money, I will give you more money.

And he's done that and they still are having a very, very difficult time meeting the deadlines. They could not meet the November 15th, 1992 deadline. That started the 18-month clock. The 1993 deadline is one that is even more critical and while we in Pennsylvania hope to meet it, it is still very much in question. There was a survey of major metropolitan areas done by the National Association of Regional Councils, and John Bosley from that organization was supposed to speak to us at AASHTO and somehow didn't make it but his information did. The question was "are you going to be able to develop a strategy by November 15th, 1993 in non-attainment areas that shows the 15 percent reduction that is required by law?"

First of all, in order to do that, you must have your emission inventory. Then you must determine how to get the 15 percent reduction. Is it mobile sources or is it stationary source? And the answers were somewhat mixed. The answer with respect to having complete inventories, 14 of the 21 major metropolitan planning organizations said yes, six said maybe, and the other wasn't impacted.

But the answer on the 15 percent reduction was much scarier than that. Six said yes and nine said maybe, including Pittsburgh and Philadelphia which were in the maybe category, and four said no. So it is a very onerous requirement to people who work in our clean air agencies around the country. They are working very diligently to meet these requirements, working with our metropolitan planning organizations, and it's still a very difficult deadline to meet.

Mr. EMERSON. And I hope that you are making that point very strongly with Mr. Shuster, that you are delivering to him.

Mr. YERUSALIM. We have no problem between Mr. Shuster and I delivering that message. They usually come in the other direction, by the way.

Mr. EMERSON. I would suspect that. I would ask the Chairman of the subcommittee and of the full committee, I am a little confused jurisdictionally here, but I think these gentlemen are making an excellent point. Are we in liaison with the Energy and Commerce Committee on this? I mean is there ongoing dialog between our committee and Energy and Commerce in a formal sense? I know that there is banter from time-to-time, but—

Mr. RAHALL. The subcommittee Chair will defer to the full committee Chair.

The CHAIR. I am not sure how to describe it, but going back to ISTEA, you know we did have a lot of arm wrestling going on about this whole issue. We are in conversation with EPA on some of this. We haven't spoken directly to Energy and Commerce about it, frankly, because we have got some other problems with Energy and Commerce at the present time, again, dealing with committee jurisdiction on both Clean Water Act as well as the Safe Drinking Water Act.

And so we have been dealing more with EPA on this rather than we have with Energy and Commerce. But the gentleman from Missouri's point is well taken and we will probably focus on this as

soon as we can get some of our clean water/safe drinking water problems behind us.

Mr. EMERSON. I thank the Chairman. I also wanted to comment, it's really good to hear, Wayne, your positive description of the relationship between the FHA and the State Department of Transportation. We're always glad to know when there are positive Federal/State relations.

And with your assurance that this is indeed a good one, I am really pleased to hear that, to know that things are working the way they ought to be working.

Mr. MURI. We are very pleased to see Rodney Slater, excuse me, proposed for the Federal Highway Administrator, as well as Jane Garvey for Deputy Administrator.

Mr. EMERSON. Thank you. Thank you, Mr. Chairman.

Mr. RAHALL. The Chair will ask that any further questions, if they could hold until we have our next witness, and perhaps we will return to those questions at that point. Thank you, gentlemen.

The Chair will now recognize a distinguished colleague of ours from the State of New York, the dean of the New York delegation, and a Member of the Ways and Means Committee and a dear friend to each of us on this committee and each of us in the House of Representatives, our friend Charlie Rangel, for the purpose of introduction of our next witness.

TESTIMONY OF HON. CHARLES B. RANGEL, A REPRESENTATIVE IN CONGRESS FROM NEW YORK

Mr. RANGEL. Thank you for this great honor, Mr. Chairman, as well as the Chairman of the full committee. If I had known that my friend and colleague Jerry Nadler was going to be with you, I certainly would have yielded for him to have this honor, which I share with him. But very seldom in political life can you introduce a political giant that happens to be your friend from your own hometown, and that is the occasion that I have today.

On the subject matter before you, we in New York pride ourselves in being a town where other people from all over the world can come to enjoy. And unfortunately we find that our infrastructure is such that it puts us in the City of New York in very serious jeopardy. I am so pleased that Chairman Mineta has chosen on the occasion that we have invited the Congress to visit the City of New York, to bring that substantive base to that visit by visiting and taking a look at our bridges, our tunnels, and our roadways, and also to listen to our mayor as he shares with you how sometimes because the Federal funding has to go through our State executive offices, that the target for these moneys sometimes don't receive the full benefit of the intent of the Congress.

And I know that Mr. Nadler brings to this committee an expertise that he's developed over the years in the State legislature and as a New York City person he knows. So what great honor I have to present to you a person that's not only talking about the problems that we have in the City of New York, but with the leadership he's provided with the Conference of Mayors, I am certain that he can share with you problems that other major metropolitan areas are having. The Mayor of the City of New York, David N. Dinkins, my brother.

TESTIMONY OF HON. DAVID N. DINKINS, MAYOR OF THE CITY OF NEW YORK, ACCOMPANIED BY JANETTE SADIK-KAHN, DIRECTOR, MAYOR'S OFFICE OF TRANSPORTATION, AND JUDY CHESSER, DIRECTOR, WASHINGTON OFFICE, CITY OF NEW YORK

Mayor DINKINS. It does help to have a friend introduce you. Thank you, Congressman Rangel. I am pleased to be with you as always. And when I tell people at home how nice it is to have the chairman of the New York State delegation as a friend and colleague, I am not sure they always understand the import of those words. But I am grateful, I know you know that I am.

Chairman Rahall, distinguished Members of the committee, I am delighted that Norman Mineta, the Chair of the full committee is with us. I appreciate your presence. Congressman Nadler, it is good to see you, sir, in this capacity.

Mr. NADLER. Thank you.

Mayor DINKINS. I am delighted. Distinguished Members of the committee, thank you for this opportunity to discuss New York City's experience with the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, known wide, far and wide, as ISTEA.

Mr. Chairman, for the record, my remarks will also serve as testimony on behalf of the U.S. Conference of Mayors and the National League of Cities. New York City is the transportation center of the country. Our subways and buses carry one-third of all transit riders in America. Our bridges and highways are both engineering marvels and the basis of our city's economic viability.

Given New York's diverse needs, public transportation, maintenance of the Nation's oldest infrastructure, and the congestion and clean air mandates, ISTEA represented the most hopeful change in Federal highway and transit assistance since the beginning of the interstate system in 1956.

Mr. Chairman, I apologize for not identifying those persons here with me. At my left is Janette Sadik-Khan, my transportation advisor. And to the right of Congressman Rangel, Judy Chesser, I am sure known to all of you as the director of our New York City, Washington office.

The clarion call of this act is to build and maintain a transportation infrastructure that will move people and goods in the most energy efficient manner. Members of this committee recognize that State and local governments are in the best position to decide how to spend Federal transportation dollars. Before I outline the specific implementation problems we have with this legislation, let me reiterate the importance of increased investment in our transportation system, which is vital if our Nation is to remain competitive in the global economy.

Unfortunately, the Federal share of investment in transportation infrastructure has actually declined over the last 10 years. In the New York region, for example, 57 percent of the transportation infrastructure funding came from Washington in 1980. By 1990, the Federal share had dropped to 35 percent.

The 1991 ISTEA bill was ground breaking in many ways, including the promise of increased Federal funds. But sadly, the pot dwindled as it bumped along the road from authorization to appro-

priation. Last year, New York City received less money under the new and improved version than was received in previous years. Consequences of reduced funding are especially evident in our 872 bridges, 56 percent of which are structurally deficient.

Please note that the New York State Department of Transportation received \$256 million last year, under ISTEA's Bridge Replacement and Rehabilitation Program. But of that sum, the New York City Department of Transportation received only \$4.3 million. And therein lies one of our problems. If a fair formula were developed based on vehicle miles traveled and population, New York City would have received approximately \$69 million instead of \$4 million.

My city did not sit back passively as Federal funds were reduced. Indeed we have had to boost our transportation spending over the last 10 years. But this increased commitment has come at a time when the city's fiscal circumstances are severely limited. The unhappy truth is that increased spending on bridges means less money for schools and health care programs.

The increases proposed for the Department of Transportation in the President's budget are a hopeful sign, but despite this encouraging news and the clear intent of Congress, it is uncertain that cities will actually benefit from these additional funds. One of the most important areas of change between ISTEA and previous transportation bills is that it adopted the goal of substantially increasing the authority of local governments to tailor Federal funds to meet the needs of diverse transportation modes.

It did so primarily through metropolitan planning organizations, but unfortunately that decentralizing goal is far from being met. ISTEA requires metropolitan planning organizations to cooperate and reach a consensus on projects selected for Federal funding. However, because these organizations are made up of local and State transportation agencies who have competing interests, some of the flexibility that is a hallmark of the new bill has been lost in battles between being local highway and transit interests on the one hand, and State agencies on the other over scarce Federal funds.

The prominent role given to metropolitan planning organizations makes good sense, since localities know the unique characteristics of their transportation system and how to best allocate funds between various modes. Yet our experience with the new bill shows that the metropolitan planning organization process is virtually ignored when funding and project selection decisions are made.

Under ISTEA, metropolitan planning organizations have exclusive project selection authority for certain programs, such as congestion mitigation and surface transportation projects. And in spending ISTEA funds within their boundaries, localities are on equal footing with the State. This is a theory. The reality is far different.

For example, ISTEA provides congestion mitigation and air quality funds to help localities comply with new Clean Air Act mandates. New York City was slated to receive \$55 million a year in these funds. As the Federal guideline states, localities are responsible for programming these funds.

Despite this clear direction, for the last two years these vital air quality moneys have been allocated and programmed outside the metropolitan planning organization process. In fact, New York City has yet to receive a single penny under this program to help comply with new Clean Air Act mandates, even though our air quality problems are second only to Los Angeles.

While the Federal Government is not responsible for the impotence of the metropolitan planning organization process, you should know that the loss of \$100 million in Federal aid makes it all the more difficult for New York City to comply with new clean air mandates. If the city is found in noncompliance with the mandates, we will suffer from the withdrawal of all Federal highway funds.

One way to redress this problem is to add legislative language to ISTEA that would allocate a permanent direct percentage of air quality funds to localities based on the relative severity of the pollution problem within each State. In addition, there should be a procedure whereby air quality funds are transferred to areas that need them once clean air goals are attained by the original jurisdiction.

In this way we would not have to depend on the whims of the State Department of Transportation for city designated funds. Our experience with Federal funding is not unique to New York. Unless funds are directly provided to cities, they will not necessarily materialize in the areas targeted to receive them.

I recently joined Mayors Daley, Bradley, Flynn, Norquist, and Abramson in raising this issue in a letter to Transportation Secretary Peña, specifically suggesting that more Federal funds be channeled directly to city projects. With your permission, I will submit that letter for the record.

Another area of concern with ISTEA is that it still does not address funding for preventive maintenance on bridges. ISTEA requires a new management system for bridges, but basic maintenance activities are ineligible for funding. The experience of New York should serve as a lesson for the rest of the Nation. We now have a comprehensive preventive maintenance program in place, but our bridges deteriorated because earlier generations deferred this essential work in anticipation of Federal dollars for reconstruction down the line.

We now know that this was penny wise but pound foolish. Maintaining a bridge is far more cost effective in the long run than reconstruction. As the stated intent of ISTEA is to improve the efficiency of the infrastructure that we have, it makes sense from a financial and public policy perspective to make bridge maintenance activities eligible for Federal funding.

I recommend that language be included in future legislation that provides funding for bridge maintenance activities. I also recommend that Congress lift the 10 percent cap on bridge funds imposed on New York, the only State to which this cap applies. With a cap not in place, our State would have received more than \$1 billion in additional bridge funding over the last decade.

ISTEA was and remains a path breaking approach to transportation planning and financing—a recognition of the importance of our transportation infrastructure, and our responsibility to rebuild and maintain our Nation's public works. Together we can build on

ISTEA's accomplishments and insure that we leave future generations with a infrastructure that is in far better condition than when we inherited it.

Thank you very much.

Mr. RAHALL. Thank you, Mr. Mayor.

The Chair will recognize our distinguished full committee Chairman, Chairman Mineta.

The CHAIR. Thank you very much, Mr. Chairman. It really does give me a great deal of pleasure to have this opportunity to welcome a great mayor to our Committee. As Mayor Dinkins knows, as I've said to him many times before, us mayors stick together.

And I have had the privilege over a long period of years, going back to my service on the Legislative Action Committee of the U.S. Conference of Mayors when it was being chaired by another predecessor of his, John Lindsey. And so through that experience, I learned about what local government meant.

So when we were putting together ISTEA, one of the things I really wanted to do was to decentralize the decision-making process because it's local government that really knows the solutions to their own problems and I felt that it was important that that shift of decision-making be made to local and State governments.

But at the same time, that the money flows with that shift in the responsibility, because without the money and just getting the shift of the responsibility, it is the shift and the shaft. So in this instance, we said, yes, the money has to go with the responsibility of making those decisions.

I think your comments here about the NPOs is well taken, and that is one of the reasons I think for these series of hearings, to make sure that the process, see what the problems are with the process. This is a major change from where we were in 1956 when the first national interstate highway system legislation went into place. This was the first time we made a major change in how the process would work. So it hasn't been, I know, a smooth process. It hasn't been one without problems.

But the fact that you, for the fact that you've taken the time to come to us and say these are the problem areas, we do appreciate it very, very much. One of the things I would like to also indicate, not only to you but to others who are talking about the insufficiency of funds, the portion—the portion of the stimulus package that is in the Senate that has already passed the House will in fact give full funding to the highway side of it. It gives roughly as I recall \$750 million additional funds for transit, even though we did ask for \$1.2 billion, but we were at least able to get \$750 million additional in the stimulus program.

So hopefully as you will continue to lobby your own Senators about being able to break the deadlock on the Senate side to get that stimulus program moving, we would appreciate it very, very much. But again, I look forward to our session in mid-May when we come to New York City and look at the facilities.

One of the things that we did in ISTEA was to make sure that there is a bridge maintenance program and you've indicated that, yes, you would like to have the bridge maintenance program being funded under ISTEA. But one of the things I remember when we had a hearing earlier in trying to put ISTEA together, when we

were in New York City and saw the difference, frankly, between the New York City bridges and the Tri-borough Bridge, and the fact that as I recall, when Mr. Moses set that up, he set it up with a tremendous flow of funds that go into the Tri-borough Bridge, but one of the things they did was to set up a very aggressive maintenance program on those bridges and you took us on a tour of the Williamsburg Bridge at the time and showed us the state of affairs.

Could you bring us up to date on what is happening on the Williamsburg Bridge since the time we visited?

Mayor DINKINS. Well, it has been—we closed sections of it from time to time as we worked on it. It is in not great shape. Do you have an up-to-date?

Janette says that we will spend \$1 billion for the four East River bridges over the next 10 years. But the Williamsburg Bridge has been a serious problem as we have had to close it from time to time and the merchants in that area really suffer, because that is where they get—their customers come over that bridge, many of them. And it has produced great problems.

But we—I think one of the main things, one of the main points I would like to make is we spend an awful lot of our money, we spend approximately \$600, \$700 million—do you have the numbers there of municipal dollars? \$865 million and from the State we get it's about \$89 million, as I recall, about \$89 million, so that we're spending our own dollars.

If some of these formulas were different, we would be able to spend less and thereby we would have these moneys available as Congressmen Nadler and Rangel know so well, we would have some of this money available for housing, for hospitals.

The CHAIR. Now, those moneys that you just mentioned are for your city-owned bridges or are you putting money into State-owned bridges that are within the city?

Mayor DINKINS. No, city-owned bridges.

The CHAIR. And the money that comes from the State, does that go towards the city-owned bridges or is that going—are there additional sums that come to the State-owned bridges as well?

Mayor DINKINS. The money that we get from the State is for State-owned bridges within the city. We received \$4.3 million of that \$256 million for use on city-owned bridges. See, part of the problem, as I understand it, is the region consists of New York City and five other counties. And when they sit down and decide how they are going to hack it up, we come out on the short end.

And were there a set formula fixed by legislation that said you shall divide and allocate the moneys as follows, and if it included such things as population and road miles, we calculate of that \$256 million, we would have gotten something like \$69 million, you know, under a formula that we would have constructed—

The CHAIR. As compared to \$4 million, is that what you are saying?

Mayor DINKINS. Right, right. Now, they spend some of that, to be fair and accurate, and correct me Janette if I'm wrong, they spend some of that \$256 million or \$252 million for State-owned bridges within the City of New York.

So I don't mean to suggest that they don't apply any of the mon-
eys, but in terms of us getting our share, we—as we calculate it,
it's nowhere near fair.

The CHAIR. Why, I am not sure, why then is there the slippage
of the funds from the State to the city, given the fact that the city
bridges are incorporated as part of the total for the State, and I
would think that there would be some formula mechanism that
says, well, given this ratio or percentage of bridges, the city bridges
as compared to State bridges.

Mayor DINKINS. One would think that, I agree. That is part of
what we write, the six of us, six mayors, wrote to Secretary Pēna,
making that kind of point. I forget the precise numbers, but I think
Chicago was in a similar position where my recollection is they got
\$1 million out of \$32 million. But if there were legislation that set
forth a criteria, and if that criteria included population and road
miles at least, there may be other factors that are relevant also,
then we would not be at the mercy of those that sit at the table
on making the judgment.

The CHAIR. Well, let me thank you, Mr. Mayor, for being here.
I wanted to thank Charlie, of course, as well as all the other rep-
resentatives from the New York City area, including our very fine
new Member, Mr. Nadler, for looking out for the interests of your
great city, plus Judy who does a great job of representing you as
well.

Mayor DINKINS. I want you to know that with your leadership
and that of the Chairman of the subcommittee and with Jerry and
Congressman Levy, I think is on this committee as well, there is
a source of comfort, source of comfort. We think that there are peo-
ple who will listen to us and weigh our concerns and address them.

The CHAIR. Thank you very much.

Mayor DINKINS. Thank you, sir.

Mr. RAHALL. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. It is indeed a distinct
pleasure and a great privilege to welcome the Mayor of New York,
David Dinkins, to join in welcoming the mayor to this hearing and
to express my appreciation for him to coming down and giving this
testimony.

And it's a distinct pleasure, a particular pleasure also to see his
transportation expert Janette Sadik-Khan, brought a breath of
fresh air and new perspectives to that office that she's held in the
last couple years. And I should also welcome Judy, except that
she's here all the time.

Mr. Mayor, we had heard testimony earlier this morning from E.
Dean Carlson, who is Executive Director of the Federal Highway
Administration, the FHWA. And he referred to the letter that you
and the other five mayors had sent to him. And in direct testimony
and also in answer to a request I asked him, he specifically said
that the apparently unfair distribution of funds to New York City
and to other cities under—by the States or through the States
under ISTEA, and the lack of functioning, the going around the
MPO's, the new mandated local planning agencies by State depart-
ments of transportation, were really start-up problems. That he
didn't see anything particularly wrong, that he thought that over
the five years of the bill, New York City would get its fair share

of the money, the other cities would get their fair share, but the reason the cities hadn't gotten their fair share of these moneys was simply because the law was so complicated, the new law was so complicated, it was start-up until moneys could get allocated, and that they would get their fair shares.

Would you comment on that, do you think the law is adequate and it's just a start-up problem or do you think that the States are frustrating the intent of the law?

Mayor DINKINS. Well, any—the mike isn't on, but I am sure you can hear me. It seems to me more than a start-up problem, because they are using some mechanism to arrive at allocation. And that mechanism mistreats us. And not just the City of New York, but that is these other cities.

And we suggest if it's true for some of the other cities that have signed this letter for Chicago, Los Angeles, Boston, Milwaukee, and Louisville, then it is not unlikely that other cities suffer as well.

And I would sure be a whole lot more confident if we had legislation that gave better direction and if the argument is that the legislation is complicated, then maybe we need to uncomplicate it and tell them in clear language that cannot be misunderstood how it ought to be allocated.

Mr. NADLER. So you think the basic problem is the flow-through process of the money and too much discretion is given at the State level where there are perhaps other political pressures counter to those that were incorporated in this bill?

Mayor DINKINS. I'm sorry, Jerry.

Mr. NADLER. In other words, you think the problem is that too much of the money flows through the States and where they are subject to different political pressures for allocation than the intent of this bill or the intent of the ISTEA?

Mayor DINKINS. Yes, the U.S. Conference of Mayors particularly and the National League of Cities also argued for a long time, not just with respect to this legislation, but with an awful lot of other Federal assistance, that moneys ought to come directly to the cities because we best know how to expend it.

And maybe most States would argue differently, but I can tell you that it is inequitable the way it now works. It may not be the intent, but that's the effect. That being the effect, then obviously we come back to those who have the capacity to remedy and address this.

So I would urge that serious consideration be given to this problem. If we can show, as the mayors of these six cities can, if we can show that the paucity, the small amount of money that we get relative to the total—it's a little hard to argue that the City of New York, with the population that we have and all the bridges we have, that—what formula is there that would yield only \$4.3 million of \$256 million for us?

Giving consideration now to the fact that some of the bridges within the city are State-owned and they use some of their \$252 million for that purpose, still, as we calculate things, if it were done on a formula that we think would be more reasonable, we could come closer to \$69 million instead of \$4.

Mr. NADLER. Well, thank you. I certainly agree with what you are saying. I wish Chairman Mineta were here because he ex-

pressed some wonder at how the State came up with this. I think anybody familiar with the politics of the New York State legislature and especially the New York State senate wouldn't wonder that.

I have one further question. When the ISTEA bill was passed one of the major innovations in ISTEA was the concept of flexibility, that a certain proportion of highway funds could be used at State discretion or local discretion for mass transit, and Senator Moynihan who guided the bill through the Senate said, well, Montana, some other State he used, I forget which one it was, Montana he presumed would choose to use all its money for highways and New York, which has such a percentage of mass transit, might choose to use a percentage of his mass transit money that is now flexible for mass transit. That was certainly his expectation.

What has been the experience—I know that from my service in the legislature, I was very dubious that the New York State Department of Transportation would allocate any reasonable proportion to mass transit. Do you think that in terms of the experience of New York a reasonable proportion of the flexible funds has been or will be allocated to mass transit?

Mayor DINKINS. No. No, it hasn't been, nor do I anticipate that it will. We look at the metropolitan transit authority, for instance, and how it allocates its surplus between commuter rails and the subways. It's real clear that we get unfairly treated.

Mr. NADLER. No, but that is—I agree, the city gets unfairly treated, but that is of its percent of mass transit money. Do you think that the question of mass transit versus highways—

Mayor DINKINS. Nationwide?

Mr. NADLER. No, no, in New York.

Mayor DINKINS. In New York, no, we don't get a fair allocation. And we have got the—we carry more people on our subways than anyplace in the country. I suppose we are, in my testimony, I make reference to the number of persons that we carry. It's a tremendous percentage of those who are so transported in the Nation.

No, we don't get our fair share, we certainly don't. And as you point out and having served in that illustrious State legislature, you know that the power resides in those who are outside the city, and so much so that few people seem to recognize that New York City, with perhaps 40 percent of the population, produces something like 55 percent of the revenue. But we—it doesn't come back that way.

Senator Moynihan makes the same kind of observation about the State of New York and our Nation, as you know.

Mr. NADLER. Thank you very much.

Mr. RAHALL. The gentleman from New York, Mr. Levy.

Mr. LEVY. Mayor, I apologize for missing the beginning of your testimony. If this question has already been addressed, I apologize for that, too. We heard testimony yesterday from a gentleman I believe from Pennsylvania who indicated that one of the problems with ISTEA was that it set up certain conflicts or tension between States and localities when there was disagreement over where some of the flexible money ought to be spent, where the discretionary money ought to be spent.

I am just wondering if from where you sit that is a problem in New York as well.

Mayor DINKINS. Well, yes, we can discuss that. It is my contention and that of the mayors of Chicago, Los Angeles, Boston, Milwaukee and Louisville, I made reference to a letter that we sent early this month to Secretary Peña, we don't think we get a fair share and part of the reason or the reason is that there is not a clear mandate with respect to how it ought to be allocated.

I argue that we should have legislation that sets forth hard criteria inclusive of road miles and population. We make reference in our testimony to the fact that of a \$160 million, for instance, that comes into the New York region, to the State rather, in New York City we got \$4.3 million.

Now, some of the balance of the \$252 million, is used in fact for State-owned bridges within the City of New York, but by no stretch of the imagination do we think it's a fair allocation. We believe that we would get something close to \$69 million were the allocation based on road miles and population.

Mr. LEVY. I thank you and I apologize for taking you—

Mayor DINKINS. No, I thank you. As a matter of fact, I commented that it is a source of comfort to the Chairman of the full committee, the Chairman of this subcommittee, and my long-time friend, Jerrold Nadler, and you on this committee gives us some comfort that the observations we make will get appropriate consideration.

Mr. LEVY. Thank you, and Mr. Chairman, thank you.

Mr. RAHALL. Thank you. Thank you very much, Mr. Mayor.

Mayor DINKINS. Thank you, sir. Thank you all.

Mr. RAHALL. Just a housekeeping announcement before we go on to the next panel. Because the previous panel did answer most all questions of Members, they are excused. The only two Members of this subcommittee who were remaining at that time are not here now, but they will be allowed to submit questions in writing if they do have further questions for the previous panel.

In addition, there are some questions that have been submitted in writing for Secretary Yerusalim of the department of transportation, secretary of transportation of Pennsylvania, and I would ask those questions be submitted for the record at this point and that the secretary respond in writing to those questions.

QUESTIONS FOR HOWARD YERUSALIM

1. Secretary Yerusalim, you discuss in your written testimony the balancing act that must be undertaken between mobility and clean air. You question the validity of the in depth analysis and technical evaluation of the air quality issues required by the Clean Air Act and ISTEA and state flexibility and realism are needed in this process. What, in your estimation, would be the most realistic way to address air quality issues in the Commonwealth of Pennsylvania and how does current law restrict your ability to address these issues?

Answer: Ozone non-attainment areas must come up with a 15 percent reduction in volatile organic compounds (VOCs) by 1996, and in severe areas such as Philadelphia, we must come up with a 3 percent annual reduction thereafter. The law forces us to look at Transportation Control Measures (TCMs) to address this problem. There is evidence that the impact of these type of actions is actually below the measuring ability of the models that are available to us. At the same time, the measures likely to produce the greatest improvements, cleaner cars and cleaner fuels, will in some cases not be countered. We need to concentrate on the type of measures that will actually work. This gets back to cleaner cars and cleaner fuels.

2. Secretary Yerusalam, you also mention the prescriptive nature of rulemaking associated with ISTEA and you give examples in the areas of planning and reporting requirements. Are there other areas where you believe the Congressional intent of ISTEA may have been misinterpreted?

Answer: The guidelines for the use of congestion mitigation and air quality (CMAQ) funds are an example. It is clear the Congress intended to allow CMAQ to be used for transit. However, the guidance makes it easy to use CMAQ to buy buses but difficult to improve transit infrastructure.

The proposed rulemaking for management systems is another example. We believe that Congress intended these systems to support decisions rather than driving decisions. The proposed rules for the congestion management system would create a system that is a set of rigid criteria to be applied to the project selection process. The requirements to address single occupant vehicle capacity projects are inappropriate in this system, and can better be handled within the planning process.

3. Secretary Yerusalam, you mention the importance of the National Highway System in your testimony. What do you estimate the benefits of this integrated highway network to be in both the Commonwealth of Pennsylvania and the nation?

Answer: The NHS is vital to the stability and continued improvement of the economy and liveability of the Commonwealth and the nation. It connects the major activity centers, educational facilities, airports, ports, military centers and manufacturing hubs. It carries a large portion of the goods and people that move across this nation, and it allows for intermodal opportunities including linkages between all modes and the base network for intrastate and interstate transit services. It is the primary network for bringing visitors to Pennsylvania and is critical to our tourism industry. It provides for the national defense through interconnections of our defense facilities. For the highway program, the NHS provides an important focus area for the planned expenditure of federal funds.

Mr. RAHALL. Our next panel is composed of Mr. Bill B. Armstrong, Jr., President, Armstrong Construction Company, Incorporated, Roswell, New Mexico, and Chairman of the Highway Division, Associated General Contractors. Mr. James R. Madara, Senior Vice President, Gannett Fleming, Incorporated and Chairman, American Road and Transportation Builders Association. And Mr. Cork Peterson, President, Peterson Contractors, testifying on behalf of the Associated Builders and Contractors.

Gentlemen, we welcome you to the subcommittee, we have your written testimony which will be made a part of the record, and you may proceed as you desire.

TESTIMONY OF BILL B. ARMSTRONG, JR., PRESIDENT, ARMSTRONG CONSTRUCTION COMPANY, INC. AND CHAIRMAN, HIGHWAY DIVISION, ASSOCIATED GENERAL CONTRACTORS; JAMES R. MADARA, SENIOR VICE PRESIDENT, GANNETT FLEMING, INC. AND CHAIRMAN, AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION; AND CORK PETERSON, PRESIDENT, PETERSON CONTRACTORS ON BEHALF OF ASSOCIATED BUILDERS AND CONTRACTORS

Mr. ARMSTRONG. Thank you. Good afternoon, Mr. Chairman and Members of the subcommittee. My name is Bill Armstrong, Jr., and I am a highway contractor from Roswell, New Mexico, and this year's Chairman of the Highway Division of the Associated General Contractors of America. AGC commends you, Mr. Chairman, for holding these important oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, of course otherwise known as ISTEA.

Mr. Chairman, I will briefly summarize the six key issues from my written statement. Several of them have been commented on already and a couple of which have not. First, AGC urges Congress to fully fund the Intermodal Surface Transportation Efficiency Act

and support the Administration's proposal to reflect the 2.5 cent motor fuel tax currently going toward deficit reduction to the Highway Trust Fund.

Unfortunately, the ISTEA promise of increased highway investment has not been fully realized during the first year and a half of authorizations. Investing in infrastructure makes sense. Investing in infrastructure makes America more competitive and creates productive jobs in the construction industry where unemployment remains about 15 percent, nearly twice the national average.

Second, AGC is concerned that the mounting diversion of highway user fees will compound the already troubling backlog and highway and bridge needs. According to the Federal Highway Administration, as of February, 1993, \$436 million in Federal aid highway funding has been obligated for nonhighway projects.

The growth of America's economy depends on a solid infrastructure of highways. In addition, AGC is concerned with the administration's proposal to use funds from the Highway Trust Fund to increase funding for high speed rail. This would further erode the balance of the Highway Trust Fund and jeopardize full funding of ISTEA through fiscal year 1997, which the Administration has stated that it supports.

Congress should begin to consider alternate user fees to offset declining revenues from increased fuel efficiency of cars, and the increasing use of alternative fuels. It is conceivable that in 20 years no cars will be manufactured that run on petroleum based fuel. Perhaps high-tech monitoring of highway use is one means of generating revenue for future needed highway programs.

Third, AGC urges Congress to expedite consideration and approval of the designation of the National Highway System and insure that the NHS is adequately funded to meet the identified capital needs.

While the NHS will include only 4 percent of the Nation's existing highway mileage, it is the mileage that carries 40 percent of the total vehicle miles traveled in this country, including 80 percent of all tourist travel and 75 percent of all heavy truck travel.

Fourth, AGC urges Congress to amend Section 1038 to allow flexibility in the minimum utilization requirements in crumb rubber in asphalt pavements. The minimum authorization requirements should be expanded to allow other uses in construction other than in hot mix asphalt pavements. Scrap tires are a significant waste management problem in the U.S.

Congress should provide a range of options to explore more effective disposal and reuse alternatives such as scrap rubber as a burner fuel. My personal experience with rubber mixes has given a less than satisfactory product.

Fifth, AGC urges Congress to carefully consider the findings of the GAO study and explore other means of promoting DBE participation that emphasize the development of a DBE's construction experience, business management and financial skills to enable the DBE firms to compete in the open competitive market.

Significant efforts have been undertaken by the construction industry to comply with the DBE requirements. Despite the fact that DOT has administered the DBE program for more than a decade,

there is still an insufficient number of eligible DBEs to adequately meet the goals in many areas of the country.

The program is not working in the way that it is intended. Goals in some areas of the country are not realistic, and more attention needs to be given to training and education. Last month, one of my first actions as chairman of the AGC's Highway Division, was to appoint a task force to bring the issue of the DBE program to the forefront in a positive and constructive way, to resolve the conflicts between agencies, contractors, and DBEs.

Lastly, AGC opposes any changes to the current Federal policy that prohibits the inclusion of guarantee or warranty provisions on Federal aid highways. Through adequate design, properly written specifications, timely materials testing, and inspection procedures, quality projects are insured and built.

AGC will continue the positive dialogue of the National Quality Initiative to promote continuous quality improvements in the highway community.

Mr. Chairman, AGC again commends you for holding these important oversight hearings. Although the transportation programs are authorized through fiscal year 1997, it is imperative that Congress closely monitor the implementation of this legislation, which is so critical to the Nation's economic health.

AGC has been at the forefront of the partnering effort. That is a cooperative effort between owner, designer, and builder. We wish to extend that partnering dimension with you, the elected representative of the ultimate customer, the highway user.

Thank you for the opportunity to testify and I would be happy to answer any questions that you or other Members of the subcommittee may have.

Mr. RAHALL. Thank you. Mr. Madara.

Mr. MADARA. Good afternoon, Mr. Chairman and members of the subcommittee. I am James R. Madara, the 1993 Chairman of the American Road and Transportation Builders Association, ARTBA.

My present professional position is Senior Vice President of Gannett Fleming, Incorporated, which is involved in the planning and design of highway, bridge and transit projects throughout the world. I am a registered professional engineer with over 40 years experience in highway and transit design.

It is a pleasure to join you today for this very important review of the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEA.

It is ARTBA's fundamental belief that an efficient, coordinated, well-constructed and well-managed transportation network is essential to both the economic and social well-being of the United States.

Today, our country lies at a crossroads in many respects, including the future development of our means of mobility. The decisions we make now will influence the course of events well into the 21st century. For that reason, these hearings are vital to charting the correct course for the investment of scarce financial resources to assure that America will not be hampered by inadequate means of mobility as it seeks to compete in an increasingly competitive and diverse world.

I commend you for calling these hearings. The new surface transportation act has been in effect for only 16 months, and many of its provisions have not yet been fully implemented. It is not too soon, however, to begin evaluating how this legislation is carrying out the objectives of those of you who developed its provisions. Because ISTEA represents a substantial break with the past and because it will govern surface transportation investments for at least the rest of this century, its initial implementation will to a large degree determine its success.

The basic tenet of our organization is the conviction that America will never have the transportation system it needs unless we are willing to commit ourselves to providing financial resources adequate to its construction, maintenance and operation.

It is not by coincidence that I choose to first discuss the National Highway System. If there is anything in the 1991 Surface Transportation Act that has enormous potential for our Nation, it is the NHS. It is essential, therefore, that the Congress, the administration and all of us in the private sector continue to focus our energies on making the promise of the National Highway System come true.

That promise is nothing less than a highway network that will be the focal point for future Federal highway and bridge capital investments. At approximately 155,000 miles, the NHS will comprise only 4 percent of the Nation's existing highway mileage. But it is the mileage that carries 40 percent of the total vehicle miles traveled, including 80 percent of all tourist travel and 75 percent of all heavy truck travel.

There are two immediate issues with respect to the NHS that invite the subcommittee's attention.

The first is the designation of the system itself. By April 30 of this year, the Secretary of Transportation is to receive proposals from the States on routes for inclusion in the NHS. Before December 18 of this year, the Secretary is directed by ISTEA to deliver his recommendations for the system to Congress. You will then have up to two years to take final action on the NHS "map".

ARTBA strongly urges that Congress give a high priority to designation of the NHS. As the future focus of the Federal highway program, it must be carefully considered and assured that the final routes do indeed serve major population centers, ports, airports and international border crossings. The highway needs of this country are already so great that there should be no delay in implementing the attack on these deficiencies afforded by the creation of the National Highway System. Expediting the congressional approval process will allow the States to move forward to improve the routes designated as part of the NHS.

Our second major concern is financing for the National Highway System. Many roads in the new system will require extensive reconstruction to bring them up to the standards necessary to meet the traffic demands that will be imposed on them. In addition, safety improvements should also be included.

The combined authorizations for the interstate and NHS programs provided over the six years covered by ISTEA total about \$43 billion. Even if the Act is fully funded, that is not enough to do the job that is needed. Funding should be increased by \$10 bil-

lion annually for this important system which would require a 10 cents per gallon increase in Federal motor fuels taxes. The resulting revenues should be dedicated solely to the NHS, with no opportunity to transfer them to other uses, as provided for most other activities under ISTEA.

ARTBA is not alone in recognizing the need for surface transportation investments above and beyond those provided by ISTEA.

Just last month, the Competitiveness Policy Council, an independent, bipartisan Federal advisory committee that reports to the President and the Congress, issued a report that states: "Over and above ISTEA's authorized annual levels, substantial additional investment, reaching \$12.5 billion, is needed well into the future to keep U.S. roads, bridges, and transit in good working order and to keep America moving, safely and reliably."

Another significant change made by the Intermodal Surface Transportation Efficiency Act is in the area of flexibility. Under the provisions of ISTEA, nearly 80 percent of the highway funds are subject to some form of flexibility or transferability. A large portion of these funds may be used for non-highway transportation alternative projects.

While transferability within the highway program can provide for effective use of authorized highway funding, the flexible approach of ISTEA can also lead to reduced highway investment while known needs continue to grow.

The latest Conditions and Performance Report transmitted to Congress in January of 1993 by the U.S. Department of Transportation shows annual highway spending needs of \$52 billion to maintain current conditions on roads and bridges eligible for Federal assistance. This is \$16 billion more than current expenditures for capital activities by all levels of government which is \$36 billion annually according to the same DOT report.

Even though the early experience with flexibility has not seen overwhelming transfers to transit or other alternative projects, the potential for reducing the serviceability of our highway system still exists. Of the \$436 million in highway funds committed to transit, the large majority have been used for bus purchases.

Mr. Chairman, where will these buses run and will they truly reduce congestion if the highways on which they operate are not improved and/or maintained? This Nation's highways must be adequately funded so that commerce and people can continue to move freely and expeditiously.

While ARTBA supports full funding of transit capital needs, it must not be at the expense of meeting highway needs. Based on 1993 DOT data, Americans prefer the automobile. Highway travel accounts for over 94 percent of personal travel, including commuting. Transit ridership, on the other hand, has shown a decline of 1 percent in annual person-trips between 1983 and 1990 according to 1990 census data.

A significant burden is placed on metropolitan planning organizations, the MPOs, to plan, program and administer transportation programs in the urbanized areas they serve. Many of these MPOs do not currently have the staff or expertise to do the planning necessary to formulate the decisions as to which transportation solution best serves their area's needs. Some of the largest MPOs rep-

representing major cities may have the required expertise in general terms, but even they may require new staffing and a revamped approval process.

It already takes four to six years to scope, plan, develop and approve a transportation construction project where highway work is the chosen alternative. The planning process in ISTEA may delay the ultimate decision even further. The result may be failure to maintain existing transportation infrastructure, leading to a decreased ability to meet local and possibly regional and national transportation needs.

This new planning system, with the attendant flexibility for urban areas, is designed to provide more local input in the decision as to which transportation alternative best meets local needs. Transit has a major role in addressing urban mobility. Again, according to the DOT Conditions and Performance Report, transit capital needs, including bus and rail assistance, are \$3.89 billion annually to maintain current conditions. This number increases to \$6.6 billion annually to reduce the backlog of transit capital needs and increase transit's national market share by 25 percent over a 30-year period.

Current transit capital needs can be met by ISTEA authorizations, which are set at \$5.2 billion per year through fiscal year 1997.

Regardless of how transit capital needs are addressed, highway spending must also be increased. Flexibility alone is not the answer for either of these important transportation modes. ARTBA has aggressively supported increases in motor fuels taxes to meet needs as defined in recent Conditions and Performance Reports. We also believe the public would support such increases if they are used solely for transportation purposes based on recent polling done by many polling organizations.

Before discussing the important issue of funding, I would like to mention the six management systems required by ISTEA. The development by FHWA of the guidelines for these systems is a positive step for improving the quality, durability and service level of our highway and other transportation systems. FHWA recently published the proposed guidelines in the Federal Register.

Mr. Chairman and members of the subcommittee, maybe the most pressing issue in the implementation of ISTEA is funding and the highway trust fund resources necessary to achieve full funding. The \$155 billion authorized for highway, transit and safety programs in ISTEA was a positive step forward in meeting transportation improvement needs that had been outstripping available resources at the Federal, State and local level in recent years.

However, full funding of the authorizations has not occurred in fiscal years 1992 and 1993. In the current fiscal year, the obligation limitation is set nearly \$3 billion below the \$18.3 billion authorized by ISTEA. Currently, Federal funds represent approximately 50 percent of all capital investment in roads, streets and bridges. With capital investment requirements for highways eligible for Federal aid at \$52 billion per year, as stated in the earlier referenced 1993 Conditions and Performance Report, Federal funding at the assumed 50 percent rate is \$8 billion annually below the level needed to meet current highway needs.

This shortfall can be made up by increasing the Federal contribution to highway improvement spending. Obviously, a Federal motor fuel tax increase would be required.

Last year, the General Accounting Office raised the issue of reduced revenue and the resulting implementation of the Byrd Amendment provision in the Highway Revenue Act to reduce highway authorizations accordingly. The GAO estimate was for a \$6 billion shortfall with authorizations reduced late in fiscal year 1995 and continuing in 1996 and 1997.

However, at a recent hearing of the Senate Transportation Appropriation Subcommittee, GAO testified that according to FHWA projections of revenue in January of 1993, the shortfall is now projected to be \$12.5 billion. This will result in a reduction of obligations of \$4 billion per fiscal year beginning in fiscal year 1995.

The solution is simple. As we have previously testified, transfer the 2.5 cents per gallon motor fuel tax currently going to deficit reduction to the Highway Trust Fund. Yes, as the GAO stated at the recent Senate Appropriations hearing, the entire 2.5 cents must be used for highway account activity if the authorization levels of ISTEA for highway projects are to be maintained in fiscal years 1995, 1996 and 1997. ARTBA strongly recommends this course of action.

Mr. Chairman, full funding is essential to making a concerted effort to meet highway and transit needs that are continually growing. We urge you and the members of the Committee on Public Works and Transportation to work with the Ways and Means Committee to resolve this critical funding issue of the revenue shortfall.

I thank the subcommittee for this opportunity to testify on the implementation of the Intermodal Surface Transportation Efficiency Act and stand ready to respond to any questions that you may have. Thank you.

Mr. RAHALL. Thank you Mr. Madara.

Mr. Peterson.

Mr. PETERSON. Good afternoon. I am Cork Peterson, and I am a highway contractor from Reinbeck, Iowa. On behalf of the Associated Builders and Contractors, I appreciate this opportunity to comment on the implementation of ISTEA.

ABC represents over 16,000 contractors, subcontractors, material suppliers and related construction industry firms. Our diverse membership is bound by a shared commitment to the merit shop—the philosophy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding. This assures taxpayers and consumers the most value for their construction dollar.

When ABC last came before you two years ago, the committee was conducting a comprehensive series of hearings to identify needs and priorities for reauthorization of the Federal aid highway program. ISTEA, the product of those many hearings and extensive debate, sets the mark for future transportation policy.

Today, we appreciate the opportunity to appear once again to comment on the progress of ISTEA and the many opportunities yet unrealized by this legislation.

ABC believes there are three aspects of ISTEA that must be addressed for the program to reach its intended potential and ulti-

mately lay the groundwork for future surface transportation legislation. They are the funding of the Act, the flexible nature of those funds, and the approval of the National Highway System.

Our Nation's infrastructure, a vital component to our future economic growth and stability, continues to suffer from a serious lack of investment. This investment gap imposes rising costs on our Nation's productivity, inhibiting our ability to compete in an increasingly global economy and threatening our basic quality of life. Since passage of ISTEA, appropriations have failed to meet authorizations by some \$4.3 billion. State and local governments who developed their transportation programs based on a fully-funded ISTEA program have had to make quite a few adjustments based on the shortfall.

ABC is pleased that the recently released Department of Transportation budget allocates \$20.6 billion for the Federal Highway Administration to fully fund the program for fiscal year 1994.

Furthermore, ABC appreciates the efforts of Secretary Peña and the members of this committee to reach an agreement with the Office of Management and Budget to end the diversion of the Federal gas tax currently going to the general revenue fund. The return of the 2.5 cent diversion to the Highway Trust Fund is a positive signal to send to the millions of highway users that contribute in good faith to the maintenance and improvement of our roadways every time they visit the pump.

In planning for a continuing highway program, serious consideration must be given to repeal of the ethanol exemption from the motor fuels tax. The current exemption costs the Highway Trust Fund \$500 million each year, with an additional \$200 million diverted from State and local transportation needs. Now that Congress has mandated the use of these fuels, we believe a subsidy of this nature is no longer necessary, and at the minimum the highway program should not bear the brunt of a subsidized alternative fuels program.

ABC firmly believes the Highway Trust Fund should be made permanent and taken off-budget. The current practice over holding money in the trust fund to mask the size of the Federal deficit is not a constructive policy for the country and not for our Nation's transportation program.

With the funding constraints we already have experienced under ISTEA and the anticipation of less than full funding for the life of the Act, ABC proposes reform of the prevailing Federal wage law to stretch the limited funds available. ABC continues to recommend a Davis-Bacon Act threshold on Federal construction projects of \$1 million.

ISTEA continues the Disadvantaged Business Enterprise Program whereby 10 percent of Federal-aid highway, highway safety and mass transit program funds are to be awarded to DBE contractors. This stringent 10 percent DBE requirement fails to recognize the need for flexibility and cooperation which we believe Congress had originally intended in its minority provision.

Instead, ABC believes partnering and mentoring programs that help emerging firms and their employees become more skilled at both the craft and management levels are most successful. Training is an investment in the future and will better equip emerging

firms with the skills necessary to successfully compete in the absence of preferential treatment.

ABC has formed a task force to identify and implement private sector initiatives to facilitate the participation of women and minorities in the construction industry. The task force is focusing on education and training opportunities to provide women and minority entrepreneurs access to the skills and knowledge necessary to compete and earn the rewards which accompany success in the free enterprise system.

Although individual ABC members participate in the DBE program, ABC officially opposes restrictive bid practices. This policy stems from our belief that set-aside programs fail to prepare certified DBEs for success in an open, competitive bid situation.

ABC supports the flexible funding structure of ISTEA, allowing States and localities to decide the best use of the available Federal funds.

As the program is implemented, ABC will continue to monitor the transfer of highway funds under ISTEA. While the funding flexibility of ISTEA allows transfers between highway categories, it also allows transfers from highway categories for transit uses, as well as transfers from highways to transportation enhancements, such as acquisition of scenic, historic or archeological sites. While ABC supports the flexibility of ISTEA, we are concerned that in some cases funds are not being used to their intended purpose.

ABC believes the designation and approval of the National Highway System routes will truly exemplify the foresight of America's transportation leaders who brought ISTEA to life. The concepts of maintaining, modernizing and managing our Nation's roadways to better link our towns and cities is ultimately the backbone of the surface transportation program. ABC is confident that the NHS routes submitted to the Federal Highway Administration will be approved by Congress in a timely manner.

In a 1990 study published by the Economic Policy Institute, Dr. David Aschauer finds that "the Nation's stock of core infrastructure are intrinsic to every sector of private production and are especially influential in the determination of total national economic output."

In his 1990 article on Highway Capacity and Economic Growth, Aschauer finds that: "An increase in the stock of highways for a given locale generates a higher return to local, productive activity by raising the level of transportation services available to producers. This higher return to production, in turn, stimulates private investment in these productive facilities. The increase in investment carries with it higher growth in output and income for the particular locale."

While Dr. Aschauer's findings are not specific to the National Highway System, ABC believes the NHS program has been designed with these economic goals in mind. ABC is certain that the designation and approval of the NHS will have a positive impact on countless industries by improving urban transportation, rural transportation and, in many cases, better linking these together.

With the passage of ISTEA and the designation of the National Highway System, we are improving and expanding our Nation's economic foundation.

On behalf of the Associated Builders and Contractors, I want to again thank Chairman Rahall and the members of the subcommittee for the opportunity to share our views on implementation of ISTEA. I am happy to answer any questions you may have.

Mr. RAHALL. Thank you very much, gentlemen.

Let me refer to both Mr. Madara and Mr. Armstrong's testimony in which you both have raised the point of the fear of flexibility, the potential of that within ISTEA for the massive diversion of highway funds in the transit programs.

In particular, Mr. Madara, you asked the question where will all these buses run? In the second year of ISTEA, I think we can agree the flexibility provisions so far have not diverted any undue amount of highway funds. However, would it be this panel's view that we should consider building some sort of fire walls, if you will, around the highway program? That is, to restrict the potential amount that can be diverted?

Mr. ARMSTRONG. No, sir. We view that there are adequate funds. If the Federal highway program is adequately funded under ISTEA there is adequate funds there to build the Nation's highway system. There is not a desire on AGC's part to build a fire wall around the program. We would like to see the users of both systems pay for their separate systems.

And, as I touched on in my testimony, we think there is going to be serious decline of revenues in the Highway Trust Fund from increased fuel efficiencies and alternate fuels, and some method must be found to raise user fees other than the traditional gasoline tax.

Mr. RAHALL. Mr. Madara.

Mr. MADARA. ARTBA's stand is that we would like to see the highways taken care of for serviceability, maintained before the funds go to transit.

Mr. RAHALL. Mr. Madara, your suggestion that Congress should adopt a separate funding mechanism for NHS is particularly interesting. I guess I am just wondering here if this has been explored any further? Do you have any idea what other groups might support this concept as well?

Mr. MADARA. No, I don't. I know we realize we need additional monies in order to do that program. And the polls, as I stated, show that the users are willing to pay the price to get the roads they need.

Mr. RAHALL. Mr. Peterson, you mentioned a concern over the ethanol exemption, which is something I share, as well as the potential effect on the trust fund revenues from imposition of a Btu tax.

A couple of these concerns with ISTEA place an emphasis on reducing highway construction in metropolitan areas and nonattainment areas, and I think we should definitely give some thought to a completely different type of trust fund finding some mechanism. Have you had discussions among members of your organization about such a concept?

Mr. PETERSON. Not that I am aware of, sir. Should the ABC National Infrastructure Committee review a separate funding mechanism, we will be happy to report our discussions to the chairman and subcommittee members.

Mr. RAHALL. Mr. Madara, I was somewhat surprised to learn that ISTEA's enhancement provisions are so wide open as you have described in your testimony. Technically, enhancement monies can be used for historic preservation projects that have something to do with transportation. Has ARTBA done a survey on the extent enhancement monies are being used for nontransportation-related projects?

Mr. MADARA. We have not done our own survey, but we can provide background on some of the ways it has been done.

Mr. RAHALL. Appreciate that.

[The information received from Mr. Madara follows:]

QUESTION OF REPRESENTATIVE RAHALL

EXAMPLES OF TRANSPORTATION ENHANCEMENTS

1. Pedestrian promenade for a public arts project.
2. Upgrading of a park (former Indian village) along a county road.
3. Renovation of train station for other than transportation purposes.
4. Renovation of ferry terminal.
5. Park walking paths.

Mr. RAHALL. One final question. As I am sure many of you heard this morning, some concerns have been raised over the minimum utilization requirements for pavements containing crumb rubber. Are construction contractors experiencing problems with implementation of these provisions of ISTEA?

Mr. ARMSTRONG. I have had some, Mr. Rahall.

Mr. RAHALL. You have heard some?

Mr. ARMSTRONG. I have had some. I have heard some horror stories. I know there are some success stories. Not only is there an increased cost, but the control of crumb rubber is exceedingly difficult. And if mistakes are made, they have disastrous results.

Mr. RAHALL. Thank you, gentlemen, for your testimony. Appreciate it.

The next panel is composed of Miss Grace Crunican, who is Executive Director of the Surface Transportation Policy Project; Mr. Robert Peck, Group Vice President for External Affairs, American Institute of Architects; and Mr. William J. Roberts, Legislative Director of the Environmental Defense Fund.

Once again, we have copies of all the prepared testimony, and they will be submitted as if read for the record, and you may proceed as you desire.

TESTIMONY OF GRACE CRUNICAN, EXECUTIVE DIRECTOR, SURFACE TRANSPORTATION POLICY PROJECT; ROBERT PECK, GROUP VICE PRESIDENT FOR EXTERNAL AFFAIRS, AMERICAN INSTITUTE OF ARCHITECTS; AND WILLIAM J. ROBERTS, LEGISLATIVE DIRECTOR, ENVIRONMENTAL DEFENSE FUND

Ms. CRUNICAN. Mr. Chairman, thank you very much.

I would first like to thank the committee. I am a former Deputy Director of Transportation from Portland, Oregon. The full committee came to Portland during the ISTEA debate. We were grateful to have the opportunity to work with them.

I would like to add to what Mr. Yerusolim said regarding Pennsylvania. We do have a State program that we have been working

on where we have adopted about eight partner States. We have about six of the agreements settled, and we have had a very good relationship with Pennsylvania. They have been working very hard to involve us in the long-range planning in the State of Pennsylvania and in the development of the congestion management system.

So, with that, I want to thank you for the opportunity to appear before you to discuss the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

I am Grace Crunican, the Executive Director of the Surface Transportation Policy Project. We are a broad-based coalition of more than 100 public and private organizations.

STPP came together in 1990 to assure that Federal transportation policy promotes the attainment of critical national objectives for the environment, economic competitiveness and sustainability, energy conservation and community enhancement. Some of the organizations that make up STPP include the National Association of Regional Councils, the American Planning Association, the National Wildlife Federation, the Bicycle Federation of America, and the two gentlemen on either side of me, the American Institute of Architects and the Environmental Defense Fund.

Before I get into the details about ISTEA implementation, I would like to address two future issues: potential changes to ISTEA and the National Highway System.

We strongly recommend the House Public Works Committee and the Senate Environment and Public Works Committee not move forward on substantive changes to ISTEA at this time. I emphasize the word substantive. Such changes are premature when new relations have not been finalized.

However, if the committee proceeds with the technical corrections bill, we have two urgent requests.

One, we request the committee give the public an opportunity to review the specific legislative language that is being considered for technical corrections before the language is moved forward for mark up. We believe it is important to avoid a quick mark up of a technical corrections bill as happened last September with H.R. 5753.

Two, we request that the committee keep any technical corrections to true technical corrections which clarify ambiguities to ensure that requirements are both understood and met within reasonable time frames.

In the event the committee does proceed with changes to ISTEA, which we do anticipate, STPP offers comments based on its response to last year's technical corrections bill, and we have included that for the record.

The other upcoming issue I would like to address is the National Highway System. STPP strongly supports open and early congressional hearings on the proposed National Highway System. Hearings initiated early in 1994 will provide metropolitan planning organizations and States with the opportunity to integrate the proposed NHS into State and metropolitan long-range transportation plans using the 15 and 20 planning factors to identify transportation priorities.

Early examination of the proposed NHS will further provide the opportunity to explore whether the creation of a national highway

system or a national transportation system best accomplishes the intermodal objectives and congressional intent behind the passage of ISTEA.

The American Public Transit Association has initiated a creative approach to the implementation of ISTEA which furthers ISTEA's multi-modal and intermodal emphasis. They have designed a map which represents a national transportation system going beyond just one class of road within one mode, such as highways.

I know you will be hearing from them next week, and I hope that you will give some credence to this creative approach.

Returning to the topic of ISTEA implementation, there are several issues that need to be addressed. One of the greatest problems we have encountered is the slow pace at which USDOT has promulgated ISTEA regulations. ISTEA changed many of the rules for how transportation decisions are made. It established new decision-making authorities for MPOs, required transportation plans to conform to Clean Air Act requirements, and allowed greater flexibility of funds.

These fundamental changes and others are new to States and to regional and local governments. These governments have turned to USDOT for guidance. This guidance and related regulations have moved too slowly, causing States and MPOs to be uncertain about how to proceed. This is evident in the little amount of money that has been flexed into different spending categories.

Many States and MPOs were initially not sure what projects qualified for spending among the many categories. The delayed regulation process has also created some skepticism among regional and State governments about the Federal Government's resolve to implement the conformity provisions.

While the Federal Government has been slow to respond to State and MPO needs, this should not be the basis for delay of statutory deadlines, especially those that relate to clean air requirements. This will reinforce the skepticism and send the wrong message to the public as well. USDOT and EPA must do everything in their power to ensure States and MPOs are meeting the emission reduction targets and timeliness through their transportation plans and projects.

Another fundamental problem STPP has observed is the uncertain development of necessary partnerships between the many players that affect transportation decisions. One of the important lessons we have learned from ISTEA is that transportation decisions affect everyone, and, therefore, we need to ensure that all those affected get a voice in the decision-making process.

MPOs need to be given the information and money they need to be full and effective partners in the transportation planning process. Air quality officials need to be fully integrated into the process of conforming transportation plans to air quality requirements. Transit operators need to be full partners at the State and local level when it comes to flexible funding decisions. And the general public must be given the greatest opportunity to be involved in the decisions that will directly impact their communities. Federal regulations need to provide benchmarks for State DOT's to follow as they continue to fully open up the decision-making process.

One of the important gains which has been made with the passage of ISTEA is the issue of flexible funding. Though some traditional categories remain, here is now greater latitude between the transportation programs. The STP, NHS and Section 9 funds all contain provisions which allow flexibility between traditional highway and transit programs. This flexibility was used only to a small degree during the first year of ISTEA. This is not surprising given the bill was signed after the fiscal year had begun and transportation improvement programs had been approved.

It will take a while for the opportunity of this flexibility to sink in at the local level and have much effect. Even then I do not anticipate a stampede to utilize this authority for two reasons.

First, there are many MPOs and States which have been hesitant to give up the transportation programs and political agreements of the past. They call it the "pipeline of projects" and are hesitant to interrupt the "flow".

Second, control of one's funds is difficult to give up. Transit agencies no more want to contribute their valued Section 9 funds to a new metropolitan-wide thinking than a county or city would want to lay their former highway dollars on the table for consideration of alternative modes. Old habits die hard.

For example, the only three States that flexed NHS funds to the STP category in 1992 were. Vermont at 50 percent, Maine at 29, and Massachusetts 6 percent. In total, however, less than 1 percent of this flexibility was utilized.

Two additional obstacles to implementation at the State level deserve mentioning. First, the gas tax in many States is constitutionally dedicated to roads. This limits a State's ability to take advantage of the flexibility provided by ISTEA. The constitutionally dedicated gas taxes cannot be used to match transit projects and parts of the enhancement program involving areas such as historic preservation and rail-to-trail conversions. Since they do not have local nonroad projects, many States have been slow to expend their enhancement funds and to utilize their flexibility to fund transit improvements.

The second obstacle is that some States have existing allocation formulas which predate ISTEA. Frequently, these formulas distribute funding to all parts of the State and don't match well with some of the new approaches ISTEA has taken—such as the STP suballocation and enhancement programs.

This spring, some State legislatures addressed this issue. Virginia, for example, just passed some changes in this area. Other States will postpone the discussion on the issue until an agreed approach can be reached.

It is extremely important to stick with this flexible funding message on the Federal level. As a former Deputy Director of Transportation for the City of Portland, Oregon, I can attest to the conversion which can ultimately occur in a region when they stop thinking about narrow funding categories and start thinking about the region's future.

Portland began with an interstate withdrawal in 1975, so it has had almost 20 years to let the idea sink in. When ISTEA was passed, the region immediately began discussing use of STP funds

for light rail. Most other regions in the country will need some time to understand how flexibility can work to their advantage.

Mr. Chairman, this is just a quick overview of the new legislation and some of the observations on how it is being implemented. In closing, I ask this committee to help break the pattern of business as usual and work vigorously to help implement important new policy directions such as flexible funding, clean air conformity and greater participation in the decision-making process which make ISTEA a landmark piece of legislation.

Thank you for taking the committee's valuable time to stay abreast of this legislation's progress and for the opportunity to testify here today.

Mr. RAHALL. Mr. Roberts?

Mr. ROBERTS. Good afternoon, Mr. Chairman. My name is William Roberts. I am the Legislative Director of the Environmental Defense Fund, a national environmental advocacy organization with over 200,000 members.

As Grace said, we are also a partner in the Surface Transportation Policy Project and have played an active role in recent legislation addressing surface transportation issues, including the Clean Air Act Amendments of 1990 and ISTEA.

The links between the environment, energy security, global warming and other issues on this eve of Earth Day are so tightly intertwined with the Nation's transportation policies that EDF, along with a number of other environmental groups, have made reform in national transportation policy a major priority.

In 1990 with the Clean Air Act Amendments and in 1991 with ISTEA, the Congress acted on these important links by overhauling a generation-old national transportation policy that largely ignored the environment, particularly its impact on air pollution.

Since the enactment of the Clean Air Act and ISTEA, we have heard complaints about the potential costs of compliance, particularly with the Clean Air Act. In our view, these complaints miss the mark. The real tragedy is the cost our Nation will incur if we continue with business as usual.

Our current transportation policy relies predominantly on the most inefficient and costly mode of transportation—the single occupant automobile. By simply leveling the playing field and imposing on automobiles the real costs of driving, vehicle use will decline and air quality will improve.

In our view, policies that promote economic efficiency will result in environmental improvement. Therefore, lowering overall transportation costs will lower environmental costs. Thus, it is with an eye on economic efficiency and a level playing field EDF presents this testimony.

Before addressing the critical linkages between transportation and an unhealthy environment, it is important to understand why transportation policy is so important to the environment. In 1990, this committee, along with the rest of the Congress and the President, completed work on a comprehensive set of amendments to the Clean Air Act. With literally tens of millions of Americans breathing unhealthy air in over 100 metropolitan areas, the need for action was overwhelming.

While factories and other so-called stationary sources contribute to air pollution, the principal source of pollution for many areas is the automobile. Over the years, the Federal Government has tried to control the emissions from cars through ever tighter emission standards and, most recently, through the promotion of cleaner burning gasoline and alternative fuels.

Although these are critical restrictions, as vehicle trips increase at a rate three to four times the rate of population growth, it is only a matter of time before these improvements in automobile design are overwhelmed by more people driving longer distances more often.

As a result, the Congress and the President included important new changes in the 1990 Clean Air Act Amendments to address automobile use—with the help, frankly, of the members of this committee—which underscore two major new themes on the impact of vehicle use on air quality.

First, transportation planning must mesh with air pollution planning. The Clean Air Act contains requirements for the States to develop clean-up plans for urban areas that have failed to attain Federal air quality standards.

Historically, transportation plans have never been considered a component of air plans. The new Clean Air Act bridges the gap between air plans and transportation plans by requiring transportation plans to meet the air quality objectives of their State air plans.

Second, metropolitan communities face tough sanctions if they fail to comply, as we heard earlier today. Prior to the Clean Air Act Amendments, sanctions were imposed at the discretion of the EPA. Under the new amendments, however, sanctions are imposed automatically against a nonattainment area if the State or nonattainment area fails to comply with these new requirements.

Everyone agrees that these are very demanding requirements. They were enacted to deal with an equally demanding air problem—urban smog. But they were not adopted in a vacuum. Congress imposed these requirements as an overlay on an extensive and complex transportation system, a system tilted heavily in favor of the source of much of the Nation's air pollution—the single occupant automobile.

Although several of the most egregious Federal policies favoring the automobile were eliminated in ISTEA, many still remain. Recently, research by the World Resources Institute shows literally hundreds of billions of dollars are spent each year to support automobiles, over and above the amount contributed by automobiles in the form of gasoline taxes. Several prominent examples are outlined in my written comments.

Clearly, one of the most economically and environmentally sensible things we can do is to ensure that drivers pay the real cost of vehicle use. Setting the right price would allow the market to operate more efficiently, eliminating overuse of the automobile and achieving a more efficient mix of transportation modes. Fuel-efficient vehicles and electric cars would become more attractive economically, as would other alternative modes of travel such as transit, bicycling and walking. Motorists also would be inclined to car

pool and drive more slowly, saving fuel and reducing the occurrence of serious accidents.

We recognize the subject of this hearing is focused on implementation of ISTEA, but the success or failure of this legislation, particularly as it relates to clean air, is functionally dependent on many factors outside the specific parameters of that legislation. It is useful, in our view, to consider ISTEA, along with the Clean Air Act Amendments, as one of several measures designed to deal with the environmental problems of transportation.

Although the estimated annual subsidies for driving are in the hundreds of billions of dollars, it makes no sense for the Federal Government to compound this bias in its roughly \$20 million investment in the Nation's surface infrastructure. But, for the last 30 years or more, the Federal Government has reinforced this bias.

Fortunately, Congress took major strides to take away this bias when it passed ISTEA. In ISTEA, Congress tackled a number of major issues that have lent historical support to the automobile over other modes. However, there is a clear need, particularly at the Federal level, to accelerate and improve the implementation of the major reforms of ISTEA. We have found a tremendous inertia among States and local officials to continue with business as usual. Much of this inertia is not mean-spirited but simply the product of decades of expectations that grew up during the construction of the interstate highway system. The post-interstate era is still a blank canvas, and many States and localities are uneasy with their role in this new world.

My written testimony discusses specific shortcomings in ISTEA implementation, but I want to make several observations in my oral remarks.

First, the lack of progress is in large measure, in our view, attributable to the previous administration's unwillingness to embrace its new role and compel a change in national transportation policy dictated by the Clean Air Act and ISTEA. The Bush administration failed to implement critical regulations needed to change transportation policy under both the Clean Air Act Amendments and ISTEA. Thus, States and MPOs were given many of the benefits of ISTEA—including increased funding flexibility—but none of the requirements—like conformity regulations and transportation planning regulations—that can make flexibility meaningful in a well-conceived planning framework.

It is our hope and expectation that the Clinton administration will seize on its new role as defined by ISTEA and the Clean Air Act Amendments and begin to turn the direction of the national transportation policy. This means fully implementing the requirements of the Clean Air Act and compelling the transportation sector to do its part to control emissions. The days of uncontrolled emissions from vehicle miles of travel growth should end and, at a minimum, we should be finding ways to offset the emissions caused by growth.

Technology is part of the answer, but only part. We need to focus on the pricing disparities discussed earlier to fully restrain VMT-induced increases in emissions.

Second, ISTEA is not a blank check to the States and MPOs. Funding flexibility was accompanied by tough planning require-

ments that must be enforced by the USDOT. Important national interests are at stake, from congestion to air pollution to mobility, and the planning process must address those national concerns as well as important local and State concerns.

So far, USDOT has essentially abdicated its role as guardian of ISTEA's planning requirements and has instead largely delegated those responsibilities to the States and MPOs. That means no one is protecting national interests, and we hope the Clinton administration will fill this vacuum created by the previous administration.

Third, Federal, State and local officials need to recognize that other interests must be incorporated into the transportation investment decision-making process. Air pollution officials, environmentalists, energy officials, planning officials and other interested parties must be allowed to fully participate. The days of giving the public 24 hours to review a transportation improvement program without any background materials must end. The bright sunshine of public discourse must replace the back room political deal making.

In conclusion, Mr. Chairman, much work lies ahead in turning the large ship that has been national transportation policy for the last decade. It won't be easy or painless. However, we believe major change must begin at the top. It must begin with a firm commitment by the Clinton administration to implement all portions of ISTEA and the Clean Air Act, the painful as well as the less painful. It must be reinforced by a strong vote of confidence by the Congress and particularly this committee, which played such an important role in the implementation of both of these important statutes.

And, finally, it must be coupled with a concerted effort by all of us to educate the American people that this Nation's long-term interest in a strong economy and a clean environment must lead to changes in our transportation system.

These are the goals of the Clean Air Act and ISTEA, and we look forward to working with the subcommittee to make them a reality. Thank you.

Mr. RAHALL. Thank you.

Mr. Peck.

Mr. PECK. Thank you, Mr. Chairman, Mr. Swett.

My name is Robert A. Peck, Group Vice President for External Affairs for the American Institute of Architects. I was a staff member of the committee similar to this one in the other body and spent many late hours working with staff and members of this distinguished committee, and I am happy to be here.

Al Eisenberg accompanies me today. Al is AIA Senior Director for Federal Legislative Affairs, and, more importantly for this purpose today, he also sits on the Arlington County Board of Supervisors, in which capacity he serves on various Washington metropolitan land use and transportation panels, and he is a leader in this area.

While I know my testimony has been submitted for the record, as you know, architects are sort of a visual bunch, and I don't suppose we can put this in the record, but I want to submit for the committee filings, and perhaps the use of staff when you all are off for votes, a seven-and-a-half minute video on the Surface Transportation Act and its potential for changing America's communities.

The important thing about this Act, Mr. Chairman and Mr. Swett, as I think you all know because you have been involved in this before, is the fundamental way in which it changes our thinking about transportation policy: it is no longer just a business of getting people from here to there, and it should not be an argument among modes, between highways and transit and ports, airports, heavy rail, light rail.

We need to think of transportation as a way to make our country work better, a way to get goods moving better between our ports and the places they need to go, and a way to get people moving from home to business and back again. That is the importance of this legislation. We think that is the importance that all Congressmen and Senators attached to the legislation when they voted for this.

We thought it was one of the more far-reaching pieces of legislation in 1991. It is disappointing the press didn't quite see it that way and didn't give it as much attention as it should have, but a lot of momentous things don't get picked up by the press—at least when they first happen.

We think architects saw the potential for ISTEA because architects, to their credit and sometimes to their detriment, tend to be visionaries. This is a piece of legislation which AIA worked on for a long time in part because architects see the potential.

In large measure, ISTEA constitutes the closest thing we have today to a national urban planning policy. As I say, transportation is not just about highways and rail, it is about the way we use our land and about how people live.

The suburbs, in which 50 percent of our population now lives, were impelled by the Federal highway program. They didn't grow up by themselves. The American taxpayers subsidized that particular way of life. And I think, unfortunately, they subsidized a way of life which became increasingly dependent on the automobile and, in some ways, created its own traffic problems. ISTEA gives us ways to solve some of those problems.

Transportation is about building communities, and it is about decisions about community structures. One of the examples which we show in our video, that people don't think of as a transportation project at all, is Oriole Park at Camden Yards in Baltimore. The most important decision made about that building—and it is a building designed by architects—is where it was sited. It was sited in a downtown area to help revitalize the city, and sited both next to a heavy rail line from Washington that goes up to Baltimore, and a light rail line inside the city, which means it alleviated the need to build certain roads and parking facilities. That is an important aspect of transportation and one which ISTEA allows cities and surrounding jurisdictions to take full advantage of.

Let me briefly touch on some of the issues you have talked about before today.

One, the AIA does endorse the idea that if there are to be technical corrections there should be separate hearings on them where people like us have the opportunity to address specific legislation. But, more important, we think there is not a need at this time for substantive amendment to the ISTEA legislation.

As other witnesses have told you, the Act is just now being put into place in an awful lot of places. There has been a dearth of guidance and regulation from the Department of Transportation which we think is going to be fixed fairly soon, and we think a lot of States and localities are just adjusting to the new system.

There are some problems we would bring to your attention. There are some transition problems, mostly in the existing pipelines, as someone mentioned before, of projects which were prepared under previous legislation. We think it is necessary that DOT give some guidance soon to the question of how those projects are to be dealt with. Some of those projects conceived in an earlier era ought to be given a peaceful and kind burial but a burial nonetheless.

There is also a concern we have that, while metropolitan areas are required to meet their ISTEA requirements by October 1 of this year, States have no obligation to do so until 1995 under current guidance. We think that is too late, and we definitely oppose any suggestion that the requirements for MPOs to meet their plans be postponed at all.

There is a great tendency, which we have seen in this country many times, to, I think, our country's detriment, for business and government to put off deadline after deadline while the rest of the world seems to stick to deadlines. You can see it in the environmental area. We put off deadlines while other countries created the technologies to meet the deadlines. It has happened also in our automotive industry with seat belts and air bags and fuel efficiency.

We don't think it does any of us any good, any more than it did any of us any good in school to try to put off deadlines. You are going to be faced with the problem anyway, so you might as well get on with it. My father would love hearing me say this.

We fully support the transportation enhancement provisions, and we want to say that some terrific projects have been done under enhancements: Reuse of old railroad stations for transit, reuse of some old bridges for current transportation needs. We do agree it is important that transportation enhancement funds be spent on transportation-related projects.

And we who care about historic preservation and architecture should no more regard these funds as a slush fund to be used for anything we happen to like than should any other government funds, and we pledge we will support a strict construction of those funds.

At the same time, we do want to say we think the enhancement funds should be spent. They should be spent on projects which cannot be funded or could not have been funded under previous programs. That is why they were called enhancement funds—to enhance transportation systems, to make communities more livable, to make transportation projects more attractive in the communities in which they exist.

As far as the national highway systems goes, we fully endorse the idea it should be part of a national transportation system and not sit by itself and not be regarded by highway interests or any other interests as yet a new source of funds looking for projects.

The whole idea of ISTEA is to make sense of our transportation system, not to provide make-work in any sense of the term.

With respect to the 2.5 cents of the gas tax coming back from its deficit reduction purpose, that is probably a good idea. We think it is important that the administration has recently clarified its intent in proposing that, if the 2.5 cents is sent back to the Highway Trust Fund, it should be divided between highway and mass transit, as is the case with other funds revenues that feed into the Trust Fund, and not be devoted solely to highway measures.

You know as well as I do, Mr. Chairman, that we all, through 1991, had the habit of referring to this as the highway bill. And even those of us who thought we were moving into a new era kept calling it that. We have to remember that though the gas tax revenues may come primarily from automobiles and trucks, the tax also comes from transit vehicles. More important, Trust Fund revenues must be used to carry out ISTEA's mission: to get our country's people and goods moving as efficiently as possible.

While trust funds are important to making sure we spend money for infrastructure maintenance and construction, it is important that we not see them as restricted pockets of money so restricted that they cannot be used in a sensible way.

Finally, we think that it is important that you keep in mind that this is a new program. New programs take time to catch on. We think that your having this hearing is a tremendous impetus to States and localities and to Federal officials to try to implement ISTEA in the spirit in which it was passed, and we thank you for the opportunity to lend our perspective to the hearing.

Mr. RAHALL. Thank you very much. Appreciate it.

Let me ask a couple of questions, Ms. Crunican, if I might. You refer to the three States of Vermont, Maine and Massachusetts, their transferring National Highway System money to the Surface Transportation Program. Can you give us some idea of the types of STP projects that these NHS funds were used for?

Ms. CRUNICAN. Mr. Chairman, I am sorry I cannot do that. I took the numbers from the Federal Highway Administration's numbers. What I can do is say there is a transfer that has been made in Portland, Oregon using STP funds. I am sorry, I cannot tell you the exact use of those funds.

Mr. RAHALL. Let me ask, then, how would you ensure through legislation at the Federal level that MPOs are given the information they need to perform their functions properly?

Ms. CRUNICAN. Mr. Chairman, the two areas that the MPOs seem to need the most help on are in the area of the congestion management systems that are starting to be developed right now and on the extension of these systems into the long-range planning process.

The FHWA has been somewhat helpful in attempting to solicit comments right now, but I think the Federal Highway Administration and Federal Transit Administration could be very helpful in promoting workshops around the country which involve the agencies that have overcome some of the obstacles already, as well as some of the interest groups that have been studying up on planning for congestion management systems.

So if the FHWA and the FTA could host several meetings around the country I think that would be helpful as training sessions for the MPOs. And I would suggest at the same time the States be involved because there are some States that do have a very good relationship, and those that don't. They need a common base of information to understand the procedures.

Mr. RAHALL. Mr. Peck, would you elaborate on potential changes to ISTEA to ensure that the State DOTs award funding for their NHS quarter projects based on objective quarter needs rather than favoring one specific type of project or mode over another?

Mr. PECK. Well again, Mr. Chairman, I am not sure we need to change ISTEA to make that happen. I think that the State planning factors, which are already in the legislation, suggest that in preparing any proposals for ISTEA funding that States consider various alternative transportation projects.

I would sort of second what Miss Crunican said. It is—what seems to be more important is some training for some States which simply don't know how to do corridor planning and to analyze what makes the most sense in using different forms of modes and transportation.

Mr. RAHALL. Thank you.

The gentleman from New Hampshire, Mr. Swett.

Mr. SWETT. Thank you, Mr. Chairman. I want to just draw on where you started already. You have asked several of my questions, and I would just like to illuminate them a little further.

Because this legislation is a radical departure from the past, and because the public does not seem to realize that yet—and I think that is partly our fault and partly your fault and partly everybody's fault for not having taken enough precaution and time to educate the public—I would agree that we have to put very concerted effort into education and disseminating the understanding that people need to have of how this is very different. You have already touched on some of the things that make ISTEA so innovative.

Have we omitted any other ideas that might be out there that need to be inserted in the record so that as we move forward we will have a benchmark to point back to? And I ask that of either Mr. Peck or Ms. Crunican.

Ms. CRUNICAN. I realized after I had answered the question that I neglected probably the most important one, and that is the regulations. I know we have called for that, but not knowing what the regulations are has, in some cases, confused folks, and in other cases it has acted as an excuse.

There are plenty of MPOs out there busting their tails to put together a package, while not knowing exactly what is expected of them. But there are others who, based on interviews, I have had with cities and counties and MPOs in States around the country, think they can just sit back and wait, and if everyone drags their feet Congress will provide them an excuse later on and say, gee, it is not working very well. So we are in the business of working with those that are again interested in busting their tails.

So simple things. I would commend the Federal Highway Administration. I would like to see a little more coming out jointly with EPA and FHWA, but FHWA has been fairly good in printing what they do know to be the case right now. So I think from the Federal

point of view, they are doing fairly well. Again, I would encourage FHWA and FTA to take that information further using the workshop idea or inviting MPOs in.

Mr. SWETT. One of the problems that I have always encountered with the government—and I think Bob Peck's father certainly had a great deal of concern about this—is deadlines. How do we get these regs out into the public's hands in a timely manner so that they can incorporate them? How does this coordination take place? Is this eventually going to be the weak link that causes this whole system to fail?

This does not only apply to the comments that you two have made but also to Mr. Roberts' concerns over air quality and pollution control: that is, not having the proper governmental regulations in place in order to enforce the changes that are desperately needed in the system.

What can we as legislators do? What can you, as people interested in seeing these changes enforced, do to ensure that milestones and deadlines are set, and that certain actions are carried out if they are not met so that people are motivated to make those changes?

Mr. PECK. I will tell you—I hope this does not sound—I don't mean this in any way to be jocular, but I think the most important thing that the Congress can do right now is to make clear to people that ISTEA is going to stay pretty much as it is for at least its term through fiscal 1997 and, as was mentioned in the Senate in oversight hearings last fall, that this sort of a system is going to continue for quite some time.

I think to the extent that all of us have a sense that the deadlines are not going to be allowed to be slipped, people will scramble to meet them. I think that is important.

Mr. SWETT. Have adequate deadlines been established so far so that we can see this thing implemented in a timely manner? Or have we not established those kinds of guidelines?

Mr. PECK. To be fair, there are some guidelines in the law which, to be fair to the States and municipalities at this point, since it has taken so long for the Department to get its guidance out, we may need to take a look at whether those deadlines can now realistically be met.

Mr. SWETT. If I can just continue in that vein, Mr. Peck, are we facing a shortage of personnel or is this an attitude problem within the bureaucracy that is causing the slowness in activating these regulations?

Mr. PECK. My hunch is that it is not personnel. I think it is more an attitude. I think the Department of Transportation, which is very well-intentioned but for various reasons which everyone here knows, for the past year until the election it was worried about things other than implementing ISTEA I guess is the kind way to put it. And there has been not a great deal of aggressive leadership at dealing with the States and localities in getting the word out.

I think there has been some training offered by the Department of Transportation, but it is hard to give training when you have not established the policies yourself.

Mr. SWETT. How closely are all the groups, Mr. Roberts, that are interested in seeing these regs come forward working together to help this process move forward?

Mr. ROBERTS. Well, let me respond to that. There are some requirements such as the Clean Air Act requirements that are legally mandated. And we have actually had—very reluctantly had to resort to litigation to compel EPA to produce regulations due out in 1991 that would at least guide transportation planners on what they are supposed to do to meet the Clean Air Act. Those regulations are still not out and are not expected to be out until this fall.

Second, I think that, to reflect on what Mr. Peck said, our experience with the DOT, particularly during last year—during the first year of ISTEA—what we encountered was a series of positions by the USDOT that they were subject to a regulatory moratoria, and, therefore, they were not going to generate any specific regulations to implement ISTEA.

I think the by-product of that has left a lot, as Grace said, a lot of MPOs who want to do the right thing and a lot of States that want to do the right thing with no clear floor of requirements that they have to meet. And, as a result, the ability for them to go before their political constituencies and say these are things we have to do, whether they are the Clean Air Act requirements or ISTEA requirements.

Until the Federal Government begins to make very clear what the requirements are going to be, both for the Clean Air Act Amendments and ISTEA and make those explicit so that there are no uncertainties about what it will take to comply with either Act, I think it will keep people at bay. There is no reason for them to act.

The scary thing from our perspective is that some of the very severe sanctions in the Clean Air Act are not going to wait. So that the sort of crunch time is upon us, and that is one reason why we have been for the last 18 months to two years now expressing a great deal of concern about the fact that we need the rules out so that people will know what to do so they can begin to plan for the requirements.

Mr. SWETT. Essentially, some groups are suggesting we change a monumental and pivotal piece of legislation when that legislation has not even been fully written in regulation language?

Mr. ROBERTS. That is right.

Just to underscore what Bob said earlier, the clear need from my perspective, in order for us to really make some progress in the Clean Air Act, given the strong inertia of the way we have done transportation policy over the last three decades, is for this committee and the Congress to make clear that these are the rules, and we are going to make sure they are enforced and enforced in a timely way. I think that message will get people to roll up their sleeves and get people to work.

Mr. PECK. If I can say one other thing.

You should know that the three groups represented here through STPP, in large measure, have been running a number of conferences trying to talk to people about what we think needs to be done. I have been saying, I think the main economic stimulus that has come out of ISTEA is in the travel and conference industry.

Everybody is talking but sometimes at cross purposes. We have conferences where we talk to citizens and other groups about how to get involved in ISTEA, and then I went to a conference of MPOs where they were trying to figure out how they could get citizens and other activists to the table. No one is bringing us all together.

Mr. SWETT. Who should do that?

Mr. PECK. I think the Department of Transportation. Somehow it seems an invitation from the Federal Government to come to an advisory session has more clout than it does from any of us. And I think Secretary Peña knows that and I think is committed to trying to bring some order into it.

I think you have—we have to be fair. There are an awful lot of people in the States and localities in the transportation departments who want to do the right thing. They want someone to suggest to them what the right thing is, and I think, to be perfectly fair, they also want a little bit of political cover when they do it. They want to say, national policy is changed, and we are following it.

Mr. SWETT. Go ahead. I am sorry.

Ms. CRUNICAN. I would like to clarify the conferences that have been held across the country. There are 11 regional conferences that have been held in conjunction with the Federal Highway Administration, the Environmental Protection Agency and the National Park Service. They have put in funding and helped design the policy in conjunction with our organizations: the Surface Transportation Policy Project, the Bicycle Federation of America, the Trust for Historic Preservation, and Scenic America.

So there have been some unique partnerships formed to go out and educate the public, and at these conferences we do bring together State agencies, MPOs, transit agencies and citizens. We have had an average of 300 to 350 people at each of these conferences around the country, and we have begun to move forward.

What we are talking about now is perhaps the Department of Transportation combining the act of regulation with the act of education for the MPOs and then taking a step to involve the citizens.

Mr. SWETT. It seems to me the problems that the legislation has experienced in its first year of implementation really center around the fact that it has not yet been fully defined in regulatory language; this allows its detractors to formulate it and configure it to their own advantage and to the detriment of its original intent.

And I would encourage you, and I encourage the regulators, to close those gaps so that those definitions are locked in, and then the debate goes on about how those words are actually interpreted and not what words are going to be used in the first place.

I appreciate the time that the Chair has allowed me to pursue these questions.

I have one last question, which I think is a little more specific and I don't expect a long answer on it. One thing I am concerned about is how we can protect the so-called enhancement funds, given the arenas financial pressures the states are under? Is that something that you see as an important issue?

Ms. CRUNICAN. I think it will be back by popular demand. The communities have come forward, the citizens have come forward, and there's a great deal of political support out there among the

communities. They have seen the potential to integrate transportation into the community. The State Departments of Transportation are always amazed and have told me how amazed are. They thought citizens were not interested in transportation except for their little highway project or anger against the bypass or something, and what the enhancement program did is bring citizens into the process in a positive manner. As they have stepped into the Departments of Transportation and have been welcomed on enhancement committees, they have begun to see that the Departments of Transportation are not made up of evil people trying to shut citizens out. Instead, they see the Departments of Transportation are there to do their best to understand what the other goals are that the communities have that are not specific to traffic counts, for example.

So I think the departments have been very receptive to the citizens. Those that have not been, have heard of positive responses in the next-door neighbor's State. I think it will be a lead-in for citizens to participate in the broader piece rather than possibly stepping backwards. That is based on public officials' comments as well as those of the citizens.

Mr. SWETT. Thank you very much, Mr. Chairman.

Mr. RAHALL. Thank you. Thank you very much for your testimony today.

We have a vote on the Floor of the House. Therefore, the subcommittee will stand in recess for 10 or 15 minutes.

[Recess.]

Mr. RAHALL. The Subcommittee will resume its sitting.

We will now hear from a panel composed of Mr. John Collins, Senior Vice President, American Trucking Association; and because of time constraints, we are going to move Mr. Terry W. Smith to this panel, as well, President of Rock Industries, Inc., Peru, Indiana, on behalf of the National Stone Association.

Gentleman, we welcome you to the subcommittee and you may proceed as you desire.

TESTIMONY OF JOHN J. COLLINS, SENIOR VICE PRESIDENT-GOVERNMENT AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS; AND TERRY W. SMITH, PRESIDENT, ROCK INDUSTRIES, INC., ON BEHALF OF THE NATIONAL STONE ASSOCIATION, ACCOMPANIED BY WILLIAM D. KELLER, VICE PRESIDENT, GOVERNMENT AFFAIRS

Mr. COLLINS. Chairman Rahall and the staff of the subcommittee, my name is John Collins, and I am pleased to be here today representing the American Trucking Association. The ATA is the national trade association of the trucking industry, and ATA's membership includes more than 4,100 direct members. We have affiliated organizations in every State of the country, as well as 10 national affiliates. So, all in all, we represent over 30,000 companies.

I appreciate the opportunity this afternoon to present the trucking industry's views on ISTEA implementation. ISTEA implementation is of vital importance to the trucking industry. My remarks today will concentrate on three areas: the funding of ISTEA, the

importance of the National Highway System, and stimulating the spirit of ISTEA.

Mr. Chairman, if you are like I am, I hate to read a whole mystery book to get to the bottom line or the punch line. I know this late in the day when you have heard so many people speak—what I want to do is give you the courtesy of giving you the punch line, and I will go back and develop the thoughts more fully. But just so you know where we do stand.

On the funding of ISTEA we fully support the funding of ISTEA, not only the highway programs but the transit programs as well. Perhaps you have heard that we have suffered a little bit of a setback, all of us, today; that the Senate did not close off debate on the extra \$2.9 billion of highway programs that is part of this stimulus program, so that will need some additional initiatives. That is an important effort that needs to go forward. So, fully fund ISTEA is our first point.

As to the importance of the National Highway System, we believe that without a national highway system, there is no reason to have a Federal Highway Administration. It is the national focus this subcommittee has been concerned with and making sure that rural areas and cities are connected with each other. That is the core of the National Highway System, and that is why we need the program.

The third major point is stimulating the spirit of ISTEA. You have heard a number of witnesses speak to you about different aspects of ISTEA. It truly is a revolutionary bill. It is important that this committee continues its oversight to nurture the MPO process as ISTEA goes through its growth pains and to also nurture intermodalism and border infrastructure issues as well.

Mr. Chairman, you are well aware of the role that trucking plays in West Virginia, as well as the role it plays in the Nation. What we have done is to give everybody a kind of colorful brochure to lay out some of the basic facts concerning the trucking industry. Very simply what we say, if you got it, a truck brought it. The trucking industry is responsible for about 77 percent of freight revenues in the United States, and there are over 7.8 million people involved in the trucking industry through its various activities in the country.

Transportation is also a significant component of the total cost of goods, about 20 percent of the cost of goods is the result of transportation expenses. So, trucking has a vital role in making sure there is a good infrastructure to make sure we can keep those costs down. And it is especially important to know—and you know well in West Virginia—that a large number of communities in this country are served only by truck when it comes to freight needs. There is an important intermodal role for trucks and rails and barges and air, but when it comes to serving a lot of our rural communities, if you don't have good truck access, you cannot get jobs and mobility.

What I want to do now is turn a little in detail and go through and develop the first of those three themes. First, the funding levels for ISTEA.

When ISTEA was enacted in 1991, it was with great promises for expanding and upgrading investment in the roads, highways,

bridges and mass transit systems. That bill earned the support of the American Truck Associations. Although the new Act's \$155 billion authorization over six years is unprecedented, we all know that the needs really outstrip even that large funding program. According to DOT the total Federal, State, and local cost just to maintain highways and bridges over the six-year period, without improvements over 1989 levels, would be about \$250 billion; and the cost to improve that goes up dramatically to \$425 billion.

The GAO study issued late in 1992 says our Highway Trust Fund has problems with its funding levels if everything were to continue the way that the program had been structured. But fortunately the Administration has proposed taking 2.5 cents of fuel tax revenues that has been going into the general fund and putting it back into the Highway Trust Fund, where we believe that it belongs. We strongly support that initiative, and we hope and expect that the subcommittee and its Members would as well.

I have mentioned briefly the problems with H.R. 1335, that has not moved smoothly through the Senate. We think that that increment of funding is very important. It sends a very important message through the country, because it suggests a steady annual flow of projects will be available through the planning and construction process for a significant period of time. This will promote a stable, long-term economic growth, instead of a process characterized by fits and starts.

This stability is important. We have heard today about some of the issues going on in the local planning arenas and some of the friction between State and local governments. Stable, reliable, predictable funding is key to minimize all of this. If the funding starts to be constrained, people who were able to work out accommodations and meet their funding needs have to go back and throw out some projects that they otherwise would have supported.

I guess our big fear is what we call the "peanut butter theory." That at some point if the money starts to get too small or too many people are creating squeaking wheels, then the money will be spread across a lot of small projects. It cannot be concentrated on projects where you need a certain lump of money for a new bridge, for rebuilding a critical road, or for a critical facility. That is why the continued high funding is so very, very important, not only to the trucking industry, but to automobile users, transit folks, and the rail industry as well.

A second key element in the long-term transportation infrastructure is the National Highway System. The National Highway System is the most important part of ISTEA to the trucking industry. The 150,000 mile NHS will consist of just 4 percent of the Nation's roads, but it is going to carry 75 percent of the Nation's truck traffic and 40 percent of the passenger traffic. So that is where the dense traffic is going to be.

The NHS's financial and economic relationship to freight is best illustrated with three numbers that I have laid out on page 6 of my written statement. I can tell you what those three numbers are. The annual Federal investment in the NHS is projected to be about \$8.5 billion, obviously a huge sum of money. But 75 percent of the truck taxes we pay would go into the NHS, and so we are paying

\$16.2 billion or nearly twice as much for that investment because it is so important to us.

And the payoff for the country is even more significant. The truck gross revenues that come from the use of that National Highway System will be \$240 billion. So that is a 30-times return on the Federal investment.

This is an issue not only for urban America. I think you heard some comments today of the concerns of the cities, but it is also a concern for rural America because it is the way that tourism gets to the wild and scenic rivers of West Virginia; it is the way the products of mines and farms get to the cities. So it is not just a part of what is going on; it is really the system that interconnects the country.

We understand there are financial concerns that have to be addressed by Congress in funding the National Highway System. But we think it is important to remember the user fee concept, that this money is being paid for by the users of the highway system. Even within the funding priorities of the national ISTEA bill, we think that Congress could provide additional resources for the NHS system by freezing investment in programs such as the MAGLEV prototype, preservation of historic railway stations and Intelligent Vehicle Highway Systems for commercial vehicle applications. We are not opposed to research in those areas, but what we want is a payoff in terms of today's problems rather than putting large amounts of money into technologies that have not really shown a real world application.

We believe market forces are the best driver when it comes to Intelligent Vehicle Highway Systems, or what is abbreviated as IVHS applications. A number of our members are using these high-tech applications very, very successfully for satellite communications, for high-value cargo. But we have a real question in our minds whether or not a coal truck moving from the mine to a railroad, predictably back and forth and back and forth, needs some kind of whiz-bang technology system when it works very well with the existing system.

For us, the National Highway System is the centerpiece of Federal participation in ISTEA. It is the focal point for America's long-term infrastructure policy. DOT is expected to come up with a proposed NHS system at the end of this year. The committee has set for itself a two-year time frame to adopt that National Highway System. We would strongly urge this committee to move more quickly than the two-year period, because any certainty you can provide to help the State and local governments move forward on the commitment would be very, very important.

My third and final point is what I call the spirit of ISTEA, that spirit of ISTEA is perhaps the most important change in the new legislation. As I said before, it is underfunding of ISTEA that can throw the funding flexibility into funding competition. It forces decision-makers at every level, at the State, at the MPO, and intermodal competition perhaps to reject options they might otherwise have wanted to pursue.

One of the key new organizations that had an advisory role before, but a much stronger role now, in the planning process is Metropolitan Planning Organizations. ATA has made a concerted effort

to reach out to the Metropolitan Planning Organizations, and as one of the earlier witnesses testified, the National Association of Regional Councils and FHWA and ATA had a national symposium on freight in New Orleans last fall.

It was interesting. These people had never sat down and talked together. The trucks had been buried down somewhere in the traffic counts of the regional planning organizations, but they had never really looked at, how does freight movement happen in their urbanized areas. So it was a major step forward.

We know a lot more needs to be done, but intermodalism does not just mean getting people out of cars and into buses. Intermodalism is taking the transportation components that are there—rail, barge, air, highways—and making them work in the most efficient manner.

That really leads me to my point about intermodalism. This committee and Congress in the ISTEA created Section 5005, which sets up a commission to look into intermodal issues. Unfortunately, that commission has a very short time string. The Bush administration was slow in naming some of those people and it does not have any specified funding. FHWA has decided they cannot pay for this committee even if they wanted to, because it is a legislative committee. So we would urge this committee to look at the issue of extending the lifetime of that committee, and also directing FHWA or allowing FHWA to take out of their operating expenses. We think it is an important activity.

Finally, I would recommend Congress pay special attention to funding border infrastructure. ISTEA called on the Secretary of Transportation to conduct two studies of border transportation issues DOT is coming back now with some key numbers that 90 percent of the trade between the U.S. and Mexico is on the surface, and of that, 80 percent by volume is by truck. We are all expecting more trade is going to be happening back and forth across that border and there is a need to make sure that border infrastructure can actually handle those needs.

Mr. Chairman, in conclusion, I sincerely believe that fully funding ISTEA will have a positive impact on our country and on our economy. I believe the national trucking industry can help you multiply those benefits. Fully funding ISTEA and moving forward quickly on the National Highway System will help my industry and the shippers and consumers we serve to compete more effectively in the global marketplace.

Thank you very much. I would be happy to answer any questions you may have.

Mr. RAHALL. Thank you.

Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman; I appreciate having the opportunity to be here today, and in the interests of time, I have greatly condensed my comments, so I should not take too long.

Terry W. Smith, President of Rock Industries Peru, Indiana. My appearance today is on behalf of the National Stone Association, where I serve as Chairman of the Board. I am accompanied by William D. Keller, NSA's Vice President for Government Affairs. I have submitted my full statement for the record.

Mr. Chairman, the crushed stone industry would like to offer three points related to our industry for the committee's consideration as you review the Intermodal Surface Transportation Efficiency Act of 1991, ISTEA.

First, as a capital-intensive industry, a reliable and predictable market for our product creates the best environment for investment decisions, for both acquiring reserves of aggregate deposits and purchasing plant and equipment. To provide quality aggregate at reasonable prices, we need to work together with the public sector to smooth the large fluctuations in the infrastructure construction market.

Second, by physical volume, our products represent approximately 85 percent of a concrete road and between 95 and 98 percent of an asphalt road. Clearly, we need to be involved in any discussion on quality and durability of roads and highways.

Finally, both as a user of our Nation's road network and a principal supplier to its construction, we believe one of the most important questions before the Congress and your subcommittee is determining the Federal role in highway construction and maintenance. We would specifically like to address this issue in the context of the National Highway System proposal and the delineation of responsibilities between different levels of government.

I would like to comment on the mandated use of crumb rubber modifier, CRM. NSA strongly believes both the public and private sectors are stewards of the environment and share in the duty to meet our infrastructure needs in an environmentally responsible manner. We further support the concept of establishing specific goals for such issues as recycling scrap tires. However, Congress stifles creativity and innovation and hinders the development of cost-effective technology in areas like recycling scrap tires when it mandates specific uses for CRM as part of the highway construction process.

The solution to the scrap tire problem does not lie with any specific technology. States should be required to devise their own solutions in meeting the goal of eliminating their existing backlog of scrap tires, as well as dealing with the annual accumulation. The Resource Conservation and Recovery Act, RCRA, may be a better vehicle for addressing this issue than ISTEA.

We urge you and the Members of your subcommittee to become involved in the RCRA reauthorization process on this issue. We specifically recommend you support a technology-neutral approach to solving the problems of scrap tire disposal, based on State-developed plans for reaching goals in this area. This approach allows Congress to recognize that CRM may be used in a number of applications such as bases, lightweight fillers, retaining walls, shoulder stabilization and as a fuel in producing other construction materials used in building highways.

In addition, there may be uses outside of the highway construction field. We believe this approach focuses on the real issue of recycling scrap tires without favoring any specific interest. If this issue is not resolved as part of the RCRA reauthorization, we recommend Section 1038 of ISTEA be amended to allow for these recommendations to be applied for ISTEA implementation.

We should allow the ingenuity and inventiveness of the marketplace to help reach the goal of recycling scrap tires rather than imposing legislative solutions.

In summary, Mr. Chairman, NSA specifically recommends, number one, full funding for ISTEA for fiscal year 1994 and urges you to work to see that its multi-year commitment to funding our surface transportation needs are kept. To accomplish this mission, we pledge our support in working with you and the full committee to restore the 2.5 cents of the Federal gasoline tax currently being used for deficit reduction to the Highway Trust Fund. The revenue stream to the trust fund must be strengthened if the total funding commitments of \$155 billion for ISTEA are to be met.

Number two, giving priority to establishing the National Highway System as part of the enduring Federal role in meeting our Nation's transportation needs.

Number three, amending the CRM mandates in Section 1038 of ISTEA to focus on the goal of recycling scrap tires while allowing the States and private sector to determine the most cost-effective way to meet these goals.

And number four, provide for business transportation user involvement in the MPO process. Thank you for the consideration of our views and I would be happy to answer any questions.

Mr. RAHALL. Thank you, gentlemen, for your testimony. Mr. Collins, let me ask you about the National Highway System. Yesterday we heard testimony about there are currently 16 interstates crossing our Canadian and Mexican borders. With all the increased trade and movement of goods, et cetera, as a result of NAFTA if it is approved, is this current interstate system sufficient to handle that increased amount of goods from NAFTA?

Mr. COLLINS. Mr. Chairman, I don't think this interstate system, the one we have right now, is adequate. I was in Texas in San Antonio two weeks ago and I heard one of the commissioners of the Texas Department of Highways say that the problem with the infrastructure he has is it doesn't go into the border area. At the time the Interstate System was designed the concern was Dallas and Houston and serving other needs across Texas and not really needs into Mexico.

When you think about it, it is really pretty logical. The system had its origins back in the 1930s and 1940s but was really designed in 1950, long before anyone anticipated having the major border trade that I think with or without NAFTA my members and the shippers are expecting. I think that we do need an enhanced infrastructure.

Having said that, clearly we don't need a new interstate crossing every 50 miles because, frankly, if we did that in the United States the roads would end up in desert in Mexico, because Mexico's infrastructure is far behind ours.

I think what we have to do is to have the national focus to understand where the large flows of origins and destinations are and see what we can do by building and expanding the infrastructure we have within the existing rights of way. And in some cases it may be a single bridge that is the bottleneck or it may even be something that is not a highway infrastructure problem. It may be a customs clearance point.

Mr. RAHALL. So would the National Highway System as it is currently being developed, and envisioned would it be sufficient to handle this increased transportation?

Mr. COLLINS. Yes. In fact, in Texas I asked the commissioner that question exactly. Within the new NHS system they have met those needs.

Mr. RAHALL. In your testimony, you strongly support intermodalism, the National Commission on Intermodal Transportation, and the need to extend the statutory deadline for the Commission's report to Congress. Could you share with us what some of your visions are that this Commission is likely to accomplish?

Mr. COLLINS. Let me give you three of the key ones that we see. The first is we think that the Commission can really help guide the process by putting together a methodology to decide how to rank projects. The trouble right now is everybody has a pet intermodal project and it may not really not fit into a system of where the money should go. There are so many different cats and dogs out there it is tough to compare one kind of project with another.

But the Intermodal Commission has people from the rail side, both passenger and freight, and from trucking. It has a broad spectrum of interests. It can really say, all right, what is the ultimate objective we are trying to meet and how can we set up a system priority of what needs to be done.

The second thing is that the Commission can help make some recommendations to DOT of how to improve its own operations. I worked in DOT for 16 years and I know that DOT is very compartmentalized. Secretary Peña is making major steps to try to change that.

But the rules of the Coast Guard on an intermodal container are the Coast Guard's rules and the rules are different when you get that same container traveling over the highways. So the second thing the Intermodal Commission can do is to give advice back to DOT from an intermodal perspective of how DOT can rethink things a little bit.

The third thing sounds kind of small but it turns out to be a very real practical problem of how do you deal with shared equipment. Historically what has happened, whoever has the biggest market power determines what liability everybody else has to assume when they take a container or a trailer from a freight car and pass it from the rail to trucking. What we really need to do is look at that whole system to see what makes sense in terms of who is responsible for maintaining the safe operation of the equipment. We need to make sure that the real objective, to make sure that the equipment is safe is met rather than what right now which is a kind of a lawyer-dominated system where the person with the power requires others to assume the responsibility for damage.

Mr. RAHALL. Mr. Smith, you recommend amending the crumb rubber modifier mandates in Section 1038 of ISTEA to focus on the goal of recycling scrap tires while allowing the States and private sector to determine the most cost-effective way to meet these goals.

This provision of ISTEA provides for the Secretary of Transportation to establish individual State reduction in the minimum utilization requirements for asphalt containing recycled rubber when

an insufficient quantity of scrap tires is not available as a result of recycling and processing uses.

Isn't this provision adequate to allow for the most cost-effective use of scrap tires?

Mr. SMITH. Yes, except that we think it is a little self-defeating to mandate it in specific projects and we would rather—we think that the problem can be better served if the States have some latitude in helping determine how they go about it.

We think that there are some problems involved in using scrap tires in the consistency of the product that you are making and a lot of the technical parts of it and we just think we would be better served if the States had a part in those decisions.

Mr. RAHALL. Gentlemen, thank you for your testimony. Let me thank you, Mr. Smith, and the National Stone Association for the very helpful book you have given us, "The Aggregate Handbook". I am glad to see there is a section in there entitled, "Surface Mining", by the way.

Mr. SMITH. Thank you.

Mr. RAHALL. Our next witness is Mr. Allan Johnson, Executive Director and Assistant Secretary-Treasurer of the Ohio Turnpike Commission, testifying on behalf of the International Bridge, Tunnel and Turnpike Association. And he is accompanied by Linda Spock, the Program Director of the Port Authority of New York and New Jersey; and Mr. Neil D. Schuster, the Executive Director of the International Bridge, Tunnel and Turnpike Association.

We welcome you to the subcommittee, Mr. Johnson. You may proceed.

TESTIMONY OF ALLAN JOHNSON, EXECUTIVE DIRECTOR AND ASSISTANT SECRETARY-TREASURER, OHIO TURNPIKE COMMISSION, ON BEHALF OF INTERNATIONAL BRIDGE, TUNNEL AND TURNPIKE ASSOCIATION, ACCOMPANIED BY LINDA SPOCK, PROGRAM DIRECTOR, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, AND NEIL D. SCHUSTER, EXECUTIVE DIRECTOR, INTERNATIONAL BRIDGE, TUNNEL AND TURNPIKE ASSOCIATION

Mr. JOHNSON. Thank you, Mr. Chairman. In an effort to save time, I am going to condense even further our testimony. We, of course, have written testimony which we have already submitted. You have introduced us all already, so I won't do it again.

We are here, of course, representing the International Bridge, Tunnel and Turnpike Association which represents toll authorities around the world in 22 countries, on five continents, including over 50 toll agencies in the United States. Our member facilities carry in excess of 7 billion vehicles a year.

We appreciate this opportunity to testify on ISTEA and are especially pleased to discuss with you and other members of this committee the progress that States and toll agencies are making to take advantage of the ISTEA provisions.

ISTEA, largely by the leadership and foresight of this and other committees, erased and, in fact, reversed a 75-year-old, anti-Federal toll policy by giving States more flexibility to utilize many funding options, including the ability to blend Federal funding up to 50 percent for roads and 80 percent for bridges and tunnels with

toll revenues to add to the transportation capacity when addressing traffic congestion in all 50 States.

Already under provisions of the ISTEA, there have been successes. For example, four States, including my State of Ohio involving the Ohio Turnpike have modified Federal agreements that would have required tolls to end under old provisions. In Florida and Puerto Rico, they have signed respective agreements with the Federal Highway Administration to allow combined toll revenues with Federal funds on various 4-R programs.

Under a toll pilot program that was originally authorized in 1987 to allow 35 percent Federal funds on toll projects, the first of those projects under that program is scheduled to open this July in Georgia. Two other pilot projects are in the construction phase in Delaware and Pennsylvania. And last year, five States used the credit for non-Federal share option, the soft match provision in getting credits amounting to the \$675 million under that program.

There are other successes—I will go to some of the concerns we have in a few minutes—especially in the electronic toll and traffic management area, ETTM as we call it. There are recent technical advances that allow the toll industry to collect tolls electronically in an accurate and efficient cost-effective manner which we think is desired by the public. Using ETTM systems, motorists can pay tolls in a hands-free, nonstop environment at highway speeds, thereby adding higher toll plaza capacity, lower toll collection costs, reduce fuel consumption, less congestion, cleaner air and increased productivity.

There are already a number of these applications in the United States. The largest of these exists in Oklahoma, known as PIKEPASS, operating on the 10-road system in Oklahoma, 550 miles. That agency has distributed PIKEPASS tags to more than 125,000 local, regional, and interstate customers and accounts for some 30 percent of all toll transactions in Oklahoma.

The Texas Turnpike Authority has been operating TOLLTAG, an ETTM system on the Dallas North Tollway since 1989. This system improves the tollway's efficiencies and reduces period congestion. This added capacity benefits all motorists, whether they are ETTM subscribers or not. The tollway has more than 53,000 tags issued to over 36,000 accounts and processes over 20 million transactions each year virtually without any error.

There are other agencies exploring ETTM technology, including monitoring, collecting, and reporting of real-time congestion information for motorists. Some toll agencies plan to use Federal funds to install these systems available under the IVHS provisions in ISTEA.

The most notable effort to date, and Linda Spock can answer questions on this, involves seven toll authorities which have formed the Northeast Interagency Group to select a compatible ETTM system that is called E-ZPass for use by motorists throughout the New York, New Jersey, and Pennsylvania region.

You heard this before from the mayor of New York. As it applies to toll facilities, some 37 percent of all toll transactions in the United States accounting for 67 percent of the Nation's toll revenues occur in this region. It is anticipated that implementation of this technology will be phased in over the next several years and that

eventually toll agency officials expect to process one million E-ZPass transactions daily.

This group (the group members) has allocated more than \$63 million to fund the activities from 1992 through 1996. And the group will also use an additional \$32 million in Federal funds available from the Federal Highway Administration under ISTEA.

There is an area of concern involving ETMM among our association and our agencies and that involves the safeguarding of radio frequencies that are necessary to operate these ETMM programs. IBTTA is opposed to any legislation or regulatory initiative that would not provide adequate frequency space for IVHS users, especially in the 900 megahertz radio band. Many of the ETMM applications operate in this frequency and such action to not protect those bands would seriously hamper those agencies planning to use these systems in the future. We claim that highway officials could lose the ability to use proven technology to reach regional transportation telecommunications needs if there is some negative action in that frequency allocation dispute.

There are several other areas of concern that we have. Certainly, many of them, you have already heard here today. Some of it involves, let's say, the historic relationships that have existed or nonrelationships that have existed between toll agencies and State departments of transportation and even the U.S. Department of Transportation in erasing, as I called it earlier, a 75-year anti-toll provision.

It is going to take some time, we think, to establish relationships between toll agencies and State departments of transportation. Some of it involves, of course, the competition for funding. This is the first time in most of the States where toll agencies are eligible for Federal funding and we are competing or will be competing with the States and other agencies for those funds.

We think there is a need to acquire information when attempting to pursue the various existing Federal funding procurement processes. You heard earlier the need to complete the formulation of regulations to implement ISTEA fully and we think there is a problem of communicating to the States the many benefits of working together with toll agencies to create the public-private funding partnerships or investments.

We have several recommendations, although we don't want to belittle the successes that have already occurred and the strong potential for future ETMM development, but we will echo some of the things you have already heard and make these recommendations.

First, we support fully funding ISTEA as originally authorized. We think that can only help everyone, including the toll agencies.

Second, we recommend extending the 2.5-cent tax on motor fuels. IBTTA is pleased that the President's detailed budget proposal presented to Congress earlier this month reaffirms this investment.

Third, we urge protecting the user fee system when funding our surface transportation network.

Fourth, we recommend adopting technical changes to the ISTEA toll provisions that would clarify the optional loan program and other items.

You are probably aware that such language was supported by IBTTA and passed the House last year in the Intermodal Surface Transportation Technical Corrections Act.

Fifth, we recommend providing more incentives for State and local governments to examine and adopt innovative funding schemes, especially in the public-private partnership area.

Sixth, we strongly urge including toll facilities in the National Highway System as provided under ISTEA.

Seventh, we recommend providing additional funding for ETTM research and development. We say this service already has a proven track record in many cases and has received overwhelming public support. I will repeat that we recommend securing the necessary radio frequency spectrums for those systems.

In conclusion, Mr. Chairman, members of the staff, prior to ISTEA, tolls provided the revenue for road building and improvement endeavors that may not have otherwise taken place with little or no Federal dollars. And despite those past Federal restrictions on toll development, we saw in this Nation the successful construction of almost 5,000 miles of toll projects. These facilities that are already in existence generate over \$2 billion in toll revenues each year, funds that are reinvested in the surface transportation infrastructure.

I think it is fair to say we advocate more use of toll financing as a vital funding bridge linking long- and short-term transportation improvement goals.

Mr. Chairman, we appreciate, first of all, being given the opportunity to be here today to speak to you. We appreciate your talking to us last month to a number of our members. We appreciated the opportunity at that same time to have met with members of the staff of this committee and we look forward to working with you in the future.

With that, Mr. Chairman, we will be happy to try to answer your questions.

Mr. RAHALL. Thank you, Mr. Johnson, for your testimony and patience in being with us today.

All of these technologies that are coming on board here in these various systems of ETTM that you described are quite amazing in my mind and I think they are certainly to be commended. That still has to give the human mind credit for outsmarting computers or any type of system you can develop when the operator of that human mind sets his or her mind to it. What is the most common way to cheat the system?

Mr. JOHNSON. Well, if I could tell, I don't think I would announce it here.

Mr. Chairman, Members, well, first of all, I think it is fair to say those of us in this industry have already dealt with the toll collection process and the ways to try to beat and cheat on those systems over all the years.

I know what I have to do on my road, the Ohio Turnpike, where we have a closed ticket, on-line computerized system, and as I say, I certainly am not going to discuss some of the possible avenues of how somebody might cheat on those systems.

Mr. RAHALL. Well, it is a problem, then?

Mr. JOHNSON. I don't consider that it is a serious problem, and I will defer for this one to Linda Spock here, who, as I say, is involved in the seven-agency consortium that is working on the electronic aspect of this in the New York area, but I think that we have—I am satisfied that we can—there is always some problem, but I would consider that it would be minor and minimal.

Ms. SPOCK. Let me just make a couple of points. One is the technology the way it works, there are very high security and fraud protections built into the technology. So as far as somebody being able to replicate the system and beat the system that way, we feel confident that the way the technology is manufactured that won't be a problem.

However, like you, we recognize that there will be people who will attempt to beat the system. For that reason, the interagency group in our area has sought video enforcement legislation. We were successful in obtaining that in New York last year. And basically that would provide the enforcement mechanism that we think we need to ensure the effective operation of the system and that would involve owner liability based on video images of license plates and sending—establishing penalties for that that would act as a deterrent to the people who might be otherwise tempted to cheat.

Mr. RAHALL. Okay. Thank you.

Mr. Johnson, as you stated, ISTEA does provide the States more flexibility utilizing Federal aid to highway funds along with toll revenues to construct transportation projects on toll facilities.

To your knowledge, are toll authorities providing the use of toll revenues for the construction of nontoll transportation projects?

Mr. JOHNSON. Yes, I think they are in several States. I know there are situations, for example, in New York, the New York throughway, I think, has responsibility and jurisdiction over some nontoll portions of the interstate system in that State. Maybe Neil might know.

Mr. Schuster points out that there may be some of that, some stretches in Maine where the toll authority is maintaining nontoll sections of their transportation system. So there are some limited cases around where, yes, the toll authorities are responsible for segments of nontoll facilities.

Mr. RAHALL. You acknowledge in your statement that law makers, highway planners and motorists nationwide are giving toll financing increasing support as a means to finance surface transportation projects.

With the realization by the transportation community that there are no free roads, can you explain to the subcommittee the reluctance of States to take full advantage of the toll provisions that are embodied in ISTEA?

Mr. JOHNSON. Well, I would certainly think that it is all so new, just like we have heard here over and over again today that these provisions are rather new and that it is taking time, I think, for people in States to realize what these advantages are going to be and to work together in implementing them. So I think it is going to come, but it is going to take some time.

Mr. RAHALL. One of the many recommendations that you make to this subcommittee calls for providing more incentives for the

State and local governments to support or rather examine innovative funding schemes, especially the public-private partnerships.

Can you provide us with any specific incentives that may encourage State and local governments to examine and adopt these innovative funding schemes?

Mr. JOHNSON. Mr. Chairman, I am at a loss at the moment to give you any specifics, but we would like the opportunity to submit those to the committee.

Mr. RAHALL. Sure we appreciate that if you have a chance to look into it.

Mr. JOHNSON. I absolutely will and there is one other area that I would like to bring up, but it was raised earlier by the mayor of New York, which we did not cover here yet and that is the question of direct pass-through of Federal funds to—in his case he was arguing for a direct pass-through for the city of New York. In our case we would ask for that opportunity for direct pass-through to toll agencies, and although that language is permitted in ISTEA, it also takes the approval of the various State departments of transportation or highways before that can be done.

That is another area that may be implemented and, of course, that is something we might have to iron out and work out with our various State departments of transportation, but there, again, it is something we see as a stepping stone to making those toll provisions operate better.

Mr. RAHALL. Thank you very much. Thank you.

[The following was received from Mr. Johnson:]



May 21, 1993

**INTERNATIONAL
BRIDGE, TUNNEL
& TURNPIKE
ASSOCIATION**

The Honorable Nick J. Rahall, Jr., Chairman
Surface Transportation Subcommittee
of the House Public Works and Transportation Committee
U.S. House of Representatives
B376 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

OFFICERS

ANTHONY J. BARNER
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Autosistema de Maiz
Houston, C.E.S.A.
Mexico, Mexico

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Central and Canada Toll Corporation
Ottawa, Ontario, Canada

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San Francisco, California USA

DIRECTORS

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Transportation Director
San Francisco, California USA

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Boston, Massachusetts USA

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Manchester, New Hampshire USA

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Albany, New York USA

PAUL E. VIOLETTE
Miami Turnpike Authority
Pompano Beach, Florida USA

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Autopista Vialoa Interchange, S.A.
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Halifax Charismatic Bridge Corporation
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VINCENT J. LEONETTI
New Jersey Expressway Authority
Hightstown, New Jersey USA

G. ALAN PLUMB
Ohio Turnpike Commission
Columbus, Ohio USA

Cory B. Haskelberg
Tollway Authority
Tulsa, Oklahoma USA

Yves Eugene 1988
MICHAEL C. ASCHER
Triborough Bridge and Tunnel Authority
New York, New York USA

JAMES S. BRONKHORST, JR.
Chesapeake Bay Bridge & Tunnel District
Cabin Charles, Virginia USA

SHARLENE E. CONNELLEY
Delaware River & Bay Authority
New Castle, Delaware USA

ROBERT L. MCGRATH
The Missouri State Toll Program Authority
Columbia, Missouri USA

CONNELL J. MATTHEW
New Jersey Turnpike Authority
New Brunswick, New Jersey USA

Thank you for the opportunity to testify before the Surface Transportation Subcommittee about the status of ISTEA implementation and the federal-aid toll program. As the Subcommittee requested, we are pleased to provide you with our thoughts on incentives which would encourage greater government use of the toll program in ISTEA.

Education

The Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), and IBTTA sponsored a well-attended and successful roundtable discussion on the toll program for federal, state and toll agency officials in June 1992. Following the roundtable, several states made use of the ISTEA toll provisions, particularly the credit for non-federal share (soft match) provision.

We believe FHWA, AASHTO and IBTTA should continue to educate transportation officials about the program. We have discussed this matter with AASHTO officials, and hope to explore ways we can help FHWA promote use of the program.

Strong Congressional Mandate

We believe strong Congressional support can impress upon the federal, state and local governments and the toll industry the value of the toll program in ISTEA. Perhaps merely clarifying these provisions would provide an incentive as well. As an example, the language found in the Intermodal Surface Transportation Corrections Act, which passed the House of Representatives last year, would clarify the optional loan program and certain environmental compliance concerns. Congress could also fully fund ISTEA, thereby, allowing eligible projects and programs to compete for funding out of greater pot of money. When the current ISTEA authorization expires, the Subcommittee could expand the Special Rule for Funding (direct pass through of funds) provision.

State Revolving Loan Funds

The optional loan program, under ISTEA, allows states to use toll financing to create revolving loan funds which can help leverage transportation investments.

Taking this idea a step further, we believe a federal-state revolving loan fund could make the program even more attractive. States could be permitted to borrow limited funds from the Highway Trust Fund to develop toll projects, pledging future toll revenues to repay the loan. Borrowed funds would be considered an asset to the Trust Fund (versus going to the state), preserving the Trust Fund balance and having no effect on the federal budget deficit.

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The Honorable Nick J. Rahall, Jr.
 May 21, 1993
 Page Two

Toll revenues could then be used in part to repay borrowed monies. Future federal authorizations to the state could also be pledged in the event toll revenues were insufficient to repay the federal loan.

IVHS Funds for ETTM

The Federal budget contains substantial funding for Intelligent Vehicle-Highway Systems (IVHS) projects. A portion of IVHS funding could be directed to accelerate the development and implementation of Electronic Toll & Traffic Management (ETTM) technology.

ETTM systems are very popular with motorists, and widespread use of ETTM could make tolls more acceptable to state and local governments and the public.

Earmarked Funding

One solution, albeit not always a popular one, would be to provide federal funds earmarked for the federal-aid toll program through demonstration projects. We realize this is a politically sensitive proposal, and one that IBTTA does not fully support at this time. We present it here as one of many ideas for your consideration.

One of the obstacles to using federal funds for toll facility development is the need for a large portion of total project costs in the first few years of the project. In many cases, states interested in providing funds for toll projects must divert a large portion of their limited resources away from non-toll projects in order to provide meaningful support of a toll project.

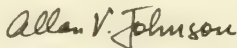
Additional funding dedicated to development of federal-aid toll projects, could motivate states to examine at the toll program with renewed interest.

In summary, the elements of the federal-aid toll program in ISTEA can be powerful tools to generate funds for transportation programs. We believe greater use of the program will best serve transportation interests at the federal, state and local level. We respectfully urge your consideration of these views, and we hope you will call on IBTTA whenever we can help the Subcommittee.

Very truly yours,



Anthony J. Barber
 IBTTA President
 Chief Operating Officer
 Interstate Transportation
 The Port Authority of
 New York & New Jersey



Allan V. Johnson
 Chairman, IBTTA Government
 Affairs Task Force
 Executive Director and
 Asst. Secretary-Treasurer
 Ohio Turnpike Commission

AJB:AVJ/nds

Mr. RAHALL. Our final panel today is composed of the following individuals: Ms. Susan Perry, Senior Vice President, Government Affairs, American Bus Association; Mr. Thomas H. Hanna, President of the American Automobile Manufacturers Association; and Mr. Joseph E. Lema, Vice President, National Coal Association. I know this was not originally planned to be a panel, but we figured that coal, cars, and buses all have something in common so we put you together.

Susan, do you want to start?

TESTIMONY OF SUSAN PERRY, SENIOR VICE PRESIDENT-GOVERNMENT AFFAIRS, AMERICAN BUS ASSOCIATION; THOMAS H. HANNA, PRESIDENT, AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION; AND JOSEPH E. LEMA, VICE PRESIDENT, NATIONAL COAL ASSOCIATION

Ms. PERRY. Surely. You have my written statement and this time I really am not going to go through it and read it, even section-by-section, let alone paragraph-by-paragraph. I have made some notes and I will cover what we think are the highlights of it.

First I want to thank you for letting us come and testify and tell you again it is always a pleasure to be here, especially when we can say "thank you" for something so significant as ISTEA and have a chance to express some thoughts on its implementation.

I know it has been a long day for you and I know this is part of a very long series of hearings, so I will try to be as brief as possible in my summary.

Our statement, our testimony, as you know from having seen it, is what I call cross-modal, let alone intermodal. As you know, we kind of jump around all over DOT with various issues and although we have somewhat of a home in the Office of Motor Carriers, that is really only so far as safety is concerned, so I will be jumping from one jurisdiction and therefore from one title to another in the bill. It is not strictly a highway day for me.

Since this is your highway day, we will cover highway and motor carrier issues first. On the vehicle length provision, you did preempt the States so they now must allow 45-foot buses and we are very, very grateful for this. I am looking at Ken and smiling because in the early ISTEA hearings we did testify on this and said that we probably would be coming back to you for preemption. We did and it happened and it is wonderful and we thank you.

It is working. There are a few problems mainly because implementation is slow, but Federal Highways does now have a supplemental notice of rule-making out and we are told that the final rule should be in place by the summertime. The only thing that will do is finally mandate that the States change existing rules and regulations that they have that might not be in line with the 45-foot. Right now 45-foot buses are legal in about 20 States and actually were in almost that many before ISTEA. Only a few of the others so far have changed their books, but they will once that final regulation is out.

Just for the sake of information, there are about a hundred 45-foot-long buses running in the country now and I understand there are a hundred more that are on order or in production, so we should be seeing some more soon. If you haven't seen them yet you

will and you probably will recognize them. Five feet is a big difference when you see them on the highway, so you will probably see them out there.

Regarding the single-State registration, we are very happy. It will be a big help. The regulations that the ICC proposed were fine with us and we are looking forward to their being effective on January 1st of next year. We would like Congress to go further at some point and take what appears to us to be the next logical step, which is to just do away with State registration of interstate carriers altogether. We think that in the spirit of economic deregulation that has happened since the State regulation was in effect that makes sense. It is not something that is urgent and crucial, but it is something that is kind of on the back of the plate and something you might think about at some point.

Regarding regulation of private, not-for-hire carriers under the Federal Motor Carrier Safety Regulations, this is an old saw. You have heard me talking about this and writing you letters and writing letters to DOT and your writing letters to DOT. In 1984, the Motor Carrier Safety Act included for the first time what we refer to as "private, not-for-hire" carriers of passengers which are mainly church buses and other privately-owned buses that technically do not hire out, but they are buses and they are on the highways and they do carry our most precious cargo.

In 1984, the Federal Motor Carrier Safety Act said that they should be regulated under the Federal Motor Carrier Safety Regulations. That has not happened yet. We are now approaching 10 years. The department has not yet promulgated final regulations to bring them into compliance.

Those buses owned by churches and other private concerns, do carry just as many passengers and they do go out on the highway, and they are engaged in interstate commerce. We think it is a really crucial safety issue which is why we worked to get it into the 1984 legislation and are quite dissipated that nine years later it hasn't happened yet.

Last year in the technical corrections bill that you all initiated and that did pass the House, there was a mandate that DOT issue that final regulation. That is as close as we have come to getting it done and, of course, we will keep raising the issue. And I would be derelict to come up here and not mention it again. As I say, it is an old saw and it is something you heard and are familiar with, but there it is again once more for the record.

Switching to the transit side, there are just a couple of transit issues that I mentioned. Charter regulation is one. There has been in effect since 1987 a charter bus regulation that was issued by then UMTA, now FTA, after many years of rule-making process. I think it was some 13 years in process. What the regulation does essentially is to prohibit recipients of Federal transit assistance that they use for equipment and facilities from providing charter service if there is a nonsubsidized carrier around who is willing and able to provide the service.

There were some exceptions built into the initial regulation and there have been some exceptions added to it since, so it is not quite that cut and dried. The problem for us is subsidized competition and that is very big on the charter side. We believe that the char-

ter regulation is working. It has been in effect since 1987. We don't think there are unmet needs. There are not groups of people being left uncared for and without charters.

ISTEA has a demonstration project of the charter regulation and we have been an active participant in the demonstration project so far as it has gotten. I serve on the Advisory Committee at the FTA along with private operators, public operators and other interested parties. We are all waiting now for Federal Transit Administration to issue the final rule regarding which cities have been chosen for the demonstration, when and how it will be conducted and so forth.

I would like, Mr. Chairman, permission to submit for the record ABA's comments on that proposed rule which was issued last October, if I may.

Mr. RAHALL. Certainly.

Ms. PERRY. Section 18(i) is a new provision in ISTEA. This has to do with rural intercity transportation. I think I am preaching to the choir on this one because this is an issue that you all found and said that you were concerned about: the decline of intercity, city-to-city transportation in rural America. You added a new section to the existing Section 18 program. That section is called 18(i).

The only problem we have with it so far is that it has not been fully funded, and I suspect that you would agree with me on that. It is the appropriation process on that one, because unless or until it is fully funded there is not enough money for the regular Section 18, small urban and rural interests to take some off the top to provide for these rural, intercity interests. Because of this and since it has only been two years and it has not been fully funded, it is too soon to know whether the program will work or not.

We think it will work if it were funded at the levels that you authorized. The hopeful scene on the horizon is that the President's fiscal year 1994 budget is in line with the authorized funding and if that comes to pass then we will be able to tell you in a year or so whether it looks as though the program can and will work.

In keeping with the flexibility, the States may use the Section 18(i) monies for whatever assistance is needed to provide rural, intercity service. This includes operating assistance which would go out on a competitively bid basis, so it is not just like an operating assistance grant for the rest of the transit program, but it would be competitively bid.

We do, as I say, have great hope for this program and its abilities to help the States provide rural service as they see it is needed. A number of the States I will say now, even without adequate funding, are indeed trying to at least ascertain what their rural needs are.

On some of those issues that I called cross-modal or so far as the bill is concerned, cross-title issues that don't really fall in one or the other one of those is intermodal terminals. There is money in ISTEA to build intermodal terminals or to refurbish terminals and make them into intermodal terminals. Congestion management language is in Titles I and III plus Section 18 language, so we believe there is some hope and a good basis for doing some intermodal terminals.

This is not only a win-win situation. This is one which we say is a win-win-win situation. It is convenient for the passengers.

Heaven forbid we should make it easy for passengers to travel and get from one conveyance to another, but this one does indeed do that. Also, it helps the private operators, my members, as they do not have the capital to build or fix the terminals up to standards that we would all like to see. But then the builder, presumably the government, State, local, both, gets to collect some user fees in the form of rent. So it is not just a question of the government building something and then the private sector comes in and uses it. The private sector would have money to pay for rent to use these terminals but not to build them. And I just think it would be a major assistance to intercity travelers.

A good example of one at the moment is the Boston South Station which will soon be fully operational. It will serve intercity rail (AMTRAK passenger rail), intercity bus (our kinds of buses), and also local transit. That is rail transit that comes into the South Station and, certainly, if there were any need for it to interface with local buses. What the MBTA in Boston uses it for is for rail transit. So you have all of these and as soon as the bus deck gets completed it will be fully operational. State and local funds did that refurbishing of South Station to make it truly an intermodal terminal.

Another topic is technology development. We are very concerned in the industry with meeting the needs of the disabled, particularly on the intercity, over-the-road buses and particularly those disabled persons who are in wheelchairs. We have some problems in the industry, as you know. The main problem is the buses themselves. The buses have high floors; the deck of the floor is almost 5 feet off the ground. They have very narrow aisles and there is a rest room on board and these are all problems in design, to say the least, let alone safety, but problems in design with wheelchairs. We envision and we have not really developed this terribly fully, but we envision at least the possibility of a public-private cooperative effort to try to develop a solution to this.

We are waiting for the Office of Technology Assessment report which is due out this summer. This was to assess the needs and demands of persons in wheelchairs and the most cost-effective means of meeting those needs and demands for over-the-road buses, these buses that I described with the high floor and narrow aisle and the rest rooms. Hopefully, solutions can be found to meet those needs and demands cost effectively.

We are now investigating what technology assistance might be available, as well as the willingness of the industry and the government to participate in some kind of venture together. We will keep you apprised of this. We may come to you again asking for some ideas and suggestions, let alone your support, but it is something that we are concerned with and I think the breadth of ISTEA allows for some help there.

There is nothing in my statement at all about the tourism side of my industry. That is on purpose. We are quite aware of the scenic byways provisions in the bill and some other tourism helps, but those will be covered next week when the Travel and Tourism Government Affairs Council, of which ABA is a member, testifies. What I tried to do is to stick more to the regular route scheduled part of the industry today.

That is all I have. I thank you again and would be happy when you are ready to try to field some questions.

Mr. RAHALL. Thank you. Susan we do have a roll call vote on the Floor at this moment followed by a second roll call vote. The subcommittee will stand in recess for about 15 minutes.

[Recess.]

Mr. RAHALL. The subcommittee will come to order. Mr. Hanna, we would be pleased to hear from you

Mr. HANNA. Thank you, Mr. Chairman. We submitted a document for the record. I have a much briefer statement here. I am Tom Hanna. I represent GM, Ford, and Chrysler, the domestic companies that manufacture cars and light trucks in this country, which is an enormous industry, large by any economic measure. We contribute more than 4 percent to total annual gross domestic product.

Approximately 300 motor vehicle assembly and parts manufacturing facilities are located throughout the country in 35 States and 200 cities. These three companies employ 800,000 people with over \$25 billion worth of payroll. If you extend the industry to include sales and service and things like that it comes out to approximately 12½ million Americans or one out of every seven jobs in the United States.

I think it is important to the country's economy that these companies prosper and just as domestic manufacturing industry is a part of manufacturing base, so, too, is our Nation's highway infrastructure an essential element of a healthy economy.

I would just like to cite a few gross statistics here. About 80 percent of all intercity passenger miles of travel are carried by cars and light trucks. Over 90 percent of U.S. households owned a motor vehicle in 1990. In 1990 highways also accounted for 77 percent of all U.S. freight transportation, \$800 billion combined or 18 percent of the gross domestic product.

Our members' interest in a safe, efficient, and well-maintained highway system is twofold. First, our customers depend on such a system to get the best use out of products we produce. And secondly, as manufacturers, we must depend on the highway system to produce and deliver the vehicles that operate on the system. This second point is even more true today than it was in years past because in these competitive times the words, "lean production," and, "just-in-time deliveries," are the watch words of our industry.

Motor vehicle manufacturers depend on timely and safe delivery of parts and components in order to keep the assembly lines moving efficiently.

For example, one goal of "just in time" is to reduce costs by minimizing inventories through the use of smaller, more frequent shipments. Just-in-time inventory could keep only three to four hours of many critical parts on hand and rely on the next truckload to keep the lines moving.

For example, a typical assembly plant might receive and unload an average of 120 truckloads of component parts and supplies daily. The plant then ships approximately 480 vehicles or half the daily production directly to dealers using 60 haulaway trucks. An additional 480 vehicles leave the plant site loaded on multilevel rail cars destined to rail unloading ramps located in major market

areas; where upon arrival they are unloaded and the 480 vehicles are delivered to dealers by another 60 haulaway trucks, all on the Nation's highway system. And yet we all know that that system is badly in need of improvement and repair.

According to the Federal Highway Administration over half of the system is in poor condition. Putting the authorities contained in the Intermodal Surface Transportation Efficiency Act fully to work on this problem is essential to the economic strength and future property prosperity of this country. For this reason, our association, AMMA, supports the full funding of ISTEA.

The interstate highway system provided for mobility to this country in the latter part of the 20th Century. A new National Highway System is needed to move us into the 21st Century. The National Highway System will help promote economic growth, lessen congestion, improve air quality and promote energy conservation and increase safety.

The process for designating the new National Highway System should proceed expeditiously. Although the deadline for Congress to act is November 30, 1995, we think that the committee should set an earlier goal.

With the Nation's continued reliance for motor vehicle transportation comes the associated responsibility of continued emphasis by all involved parties on the importance of highway safety. As reported here earlier today, the fatality rate is 1.8 per 100 million vehicle miles. More importantly the absolute number of fatalities is the lowest it has been in years and years.

Accordingly, we support section 1031 of the Act, which was enacted to provide an additional incentive to pass and promote compliance with effective safety belt use laws through a three-year grant program.

Finally, I would like to say a word which I know is of great interest to the subcommittee, as well as to the industry I represent. I refer to the 660 million research dollars authorized over five years to improve the current transportation system which includes pursuing intelligent vehicle highway systems. We fully support this effort and commend the subcommittee for its leadership and its efforts in fostering IVHS programs.

I would like to stress, however, that IVHS will be evolutionary, not revolutionary. Systems will be added to vehicles incrementally and the customer will set the value of service received by the willingness to pay for these features. As vehicles are introduced with IVHS technologies all must have access to highways, including those with and without IVHS systems and the mix must be capable of safe operation.

In conclusion, Mr. Chairman, we look forward to working with you and the committee as well as Chairman Mineta, and the Ranking Member, Congressman Petri, and Congressman Shuster who is also chairman of the Congressional Auto Caucus. We want to cooperate and support this most important effort. Thank you very much.

Mr. RAHALL. Thank you.

Joe.

Mr. LEMA. Thank you, Mr. Chairman. For me it was fortuitous that you assembled this anchor panel and put me on it. You know

in the 1950s I was a traffic engineer in the City of Milwaukee. In the 1960s I was on the staff of the U.S. Bureau of Public Roads and of the National Highway Traffic Safety Administration. I was kind of out of work in the 1970s. I was a consultant in the 1970s and in the 1980s and now I do, as you know, serve as vice president for transportation of the National Coal Association, so I am more or less of a coal hauler, now.

Mr. Chairman, it is privilege, truly, for me to appear before you in your leadership of this subcommittee. The subcommittee does carry major significance for coal, coal shippers, coal producers, that require efficient transportation.

I am Joe Lema, National Coal Association's vice president for transportation. I appear before you today, first, to urge that you support seeking an update of the Federal Highway Administration's 1980 Coal Roads Study. The study reported a multi-tiered strategy to meet needs on a national coal road network of more than 34,000 miles linking mines with utility and industrial consumers of coal and with railroad tipples and river terminals utilized for intermodal transshipments.

Annually, coal production has risen 20 percent from 1980 to the level of about 1 billion tons annually in the first years of the 1990s, a level that NCA forecasts will continue in 1993. That study update would be a timely source of current findings for inputs to the development of Surface Transportation Program projects and National Highway System projects under plans to be prepared by States and metropolitan planning organizations under provisions of Title I in the Intermodal Surface Transportation Efficiency Act of 1991.

Of course, such considerations will be desirable and appropriate in selected States having higher coal production and surface coal transportation demands. For example, I have traveled the 130-mile stretch of U.S. Highway 52 from the bountiful coal fields of southern West Virginia in the vicinity of Welch, northwesterly to Ceredo and Kenova near Huntington, West Virginia. This is an important coal-producing area with extensive trucking required on U.S. 52 to link mines with railroad tipples and with river terminals on the Big Sandy and the Ohio Rivers.

The terrain is hilly and the road has several points where horizontal and vertical curvatures are severe. Sight distances are restricted. Local access points are numerous and the absence of turning lanes and shoulders results in hazards due to stopped vehicles in traffic lanes.

Certainly, that type of roadway is a clear candidate for construction projects required to reduce traffic hazards and to provide needed traffic capacity with full regard to the mix of vehicles, including large trucks, that must use the route. Realizing that approximately 100 million tons of coal are hauled annually by trucks from mines directly to utility and industrial plants for distances of less than 50 miles up to 300 miles or more and that annual coal truck haulage is more than double that level when adding trips that typically are less than 50 miles to river terminals and railroad tipples for transshipment by rail and barge, it can be seen that it is timely to revisit the issue of coal road needs.

We urge the subcommittee to look favorably on approval for updating the 1980 study, communicating with the appropriations subcommittee to enlist its support for the timely action.

NCA further welcomes the provisions of Title V which seek to promote intermodal transportation and to provide for grants to States to develop model programs. Several States would appear to be well-suited in that regard. For example, the 1980 study indicated that 80 percent of the coal road system mileage was located then in four States—Kentucky, Ohio, Pennsylvania, and West Virginia.

In our view, the development of model intermodal transportation programs in such States characterized by high tonnages of coal production and broad intermodal connections among trucking, rail carrier and barge line services engaged in coal transportation should be given encouragement and approval by the subcommittee.

Mr. Chairman, thank you on behalf of the coal industry for enabling us to appear before you.

Mr. RAHALL. Thank you very much.

Susan, let me begin asking you a couple of questions. You highlight in your testimony a set-aside for inter-city bus projects within the Section 18 program as one which received less options for transit programs that were fully funded.

Would you share with the subcommittee some of the specific examples of projects that are funded with these set-asides, as well as your thoughts on whether 15 percent is too high a set-aside in years in which Section 18 is not fully funded?

Ms. PERRY. Surely. I think few, if any, and certainly none that I know of specifically, have been funded because the set-aside has been so low. It was anticipated 5, 10, and 15 percent. Well, the first year when it was 5 percent, the appropriation was so low that 5 percent was very little.

In the second year of the authorization the appropriation amounts to about \$9 million for the entire country. So there is really not much that is going on. I would suspect, Mr. Chairman, that most of what they are using it for, those who are using it, may be planning money. I know that New York State has some projects, Michigan has some projects because those were States that were already doing good things with rural service and had intercity programs, so I think they have probably used theirs and folded it into their existing programs. I certainly can check and get you some specifics.

In fiscal year 1994, 15 percent of \$132 million, which is what the President has asked for, is almost \$20 million. I think it is not too much. I mean \$20 million spread around the country to the States, it goes out on a population basis the same as the basic Section 18 program does. I don't believe it is too much at all and when I said it is too soon, if the program is working, you know, until we have the funding levels that you all appropriated for a few years then we can better assess whether it is too little. I doubt very much that it is too much.

The problem now is that the original Section 18 recipients need to be held harmless and I don't blame them one bit for that. Until the funding goes up to what you authorized, it is not fair really to take a big hit off the top and take away from them what they had

in much needed programs and there are, of course, much needed local transit programs in the rural areas.

Mr. RAHALL. Mr. Hanna, you have testified on the national highway system? Of course, this is a very important element to the Nation's manufacturing industry. Can you provide us the estimated cost savings that accrued to the manufacturing industry by efficiently utilizing components of the NHS to control inventory costs?

Mr. HANNA. I don't have a figure for that. I could look into it, Mr. Chairman.

Mr. RAHALL. If you would.

Mr. HANNA. What we know is that the industry is so much more dependent now just simply in getting those shipments in. Every hour you shut down an assembly line it costs about 50, 60 cars. Let me see if we can look into some numbers.

Mr. RAHALL. We appreciate that.

In addition to AMMA's strong support for the enactment of the State laws to require the use of seat belts, what other safety measures that fall within the jurisdiction of this subcommittee are supported by your membership?

Mr. HANNA. We have for a long time and you are quite right, it was the automobile industry that pretty much funded and engineered the national program to pass safety belt use laws. We think there is a tremendous need now to increase usage of safety belts in automobiles. We support funding of the section—I believe it is 1031 of the bill for incentives to States to pass and enforce safety belt use laws.

Mr. RAHALL. All right.

Joe, let me ask you about the issue of coal haul roads. As you know, I am no stranger to that issue dating back to my early years on this subcommittee. During the Carter administration, we did try to get a provision passed in the highway bill to establish an out right grants program to rebuild roads that were impacted by coal trucks or roads impacted by the transportation of energy products.

While the Reagan administration vehemently opposed the concept of a grant program, we were successful with a provision in 1982 which increased the Federal share of impacted roads from 75 percent, normally 75 percent at that time to 85 percent. That was if the States exercised that option.

Over the years we found that the States were not taking advantage of this provision. I believe Kentucky may have used it in a couple of instances and that was pretty much it. With ISTEA, with the exception of interstate, we set the Federal share at 80 percent for all projects and subsequently the energy-impacted roads provisions lapsed.

Today now in your testimony you are suggesting an updated coal road study would be valuable for the purposes of transportation planning decisions within the context of the STP and NHS; is that correct.

Mr. LEMA. Correct, sir.

Mr. RAHALL. What type of considerations do you believe that energy-impacted roads should be given within the context of State-wide transportation improvement programs?

Mr. LEMA. Mr. Chairman, first of all, you certainly are totally conversant with coal and coal transportation. We are well aware of

that. We do believe that because the 1980 study first of all, did identify in 14 different strategies a national program that would have cost somewhere between 3.5 and \$20.5 billion and that the program was developed by the Federal Highway Administration with two outstanding consulting organizations and the involvement of 16 States, that study was in itself well-founded.

We cited Kentucky as perhaps having had taken advantage of that program and I believe they have. Particularly, they did in U.S. 23 which flanks the Big Sandy on the Kentucky side next to West Virginia, an outstanding example of what can be done geometrically and by traffic controls. We believe due to the rather high percentage increase in coal production in the last 12 years—after all 20 percent, we now produce a billion tons a year—this adds a major amount of ton-miles of traffic. We also believe that because certain coal becomes even more important due to the 1990 clean air amendments that there will be a need to revisit which roads to-date truly should remain on that 34,000-mile network, which might be added, and which ones deserve extra attention by the States in 80 percent financing under ISTEA.

We think it is a new era. Twelve years have passed. It is time for another look. We think that study was done very professionally and it could be updated with a minimum amount of effort, and with the encouragements of this subcommittee and the full Public Works Committee, I think key States would go forward with highway improvements that are sensitive to coal trucking.

Mr. RAHALL. Let me ask you a question that is about a problem which is common throughout the Appalachian coal fields, and that is the excessive weight of coal trucks in West Virginia. That weight is not supposed to exceed 80,000 pounds. Yet it does happen quite often. It is difficult to enforce.

The route 52 to which you referred in your testimony is a perfect example where this happens every day.

Are you aware of whether any consideration has been given by the industry to, for example, paying some type of special user fee to the State in return for being able to run these heavier trucks?

Mr. LEMA. Well, Mr. Chairman, I must admit I am not familiar with a truck user fee for coal trucking, if that is the reference you have. Let me say that National Coal Association is a supporter of transportation user fees. We are not anti-user fees. We do want them to be balanced fair and equitable and shared by all users.

I also should say on the record that we support adherence to the national standards set by the Federal Highway Administration for axle loading, curvature, gradient, and all other geometric requirements of the highway also. We certainly oppose the notion of overloads and the dangers associated with that.

When it comes to trucking user fees, it is a new one to me, but we would be glad to examine that from our perspective.

Mr. RAHALL. Or higher license fees. A concept on that line.

Mr. LEMA. Mr. Chairman, we like that perhaps even better. It seems to me that the revenue has to be generated somehow. We are not unaware of that. In fact, we supported, for instance, the 1986 Water Resources Development Act and you realize that we supported its increase in the barge fuel tax so we could rebuild the

Gallipolis lock and dam right near the junction of the Kanawha and Ohio Rivers. We are open-minded on that subject.

Mr. RAHALL. The formal name of it is the Robert C. Byrd Locks and Dam.

Mr. LEMA. I understand that, it is very appropriately named.

Mr. RAHALL. You had better not forget it.

Let me conclude with this statement to Susan. In her position with American Bus Association. You state that although legislation enacted in 1984 required the inclusion of private not-for-hire carriers under the Federal Motor Carrier Regulations, to date regulations have not been issued by the FHWA. You also point out that the ISTEA technical corrections bill passed by the House last year contained a provision mandating a final rule by a date certain. However, as we are all aware, that bill did not pass.

I want to make sure that you know that this committee is as concerned as you are. We have requested a complete report on the standards of the rule-making to include an explanation as to why a final rule has not been issued.

Ms. PERRY. Great.

Mr. RAHALL. Upon receipt of a response from FHWA we would update you on that and I would refer to a letter written by our full committee chairman, Chairman Mineta, to Secretary Peña be made a part of the record in this regard.

[Letter referred to follows:]

NORMAN Y. MINETA, California
Chairman

BUD SHUSTER, Pennsylvania
Ranking Republican Member

U.S. House of Representatives
COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

SUITE 2165 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4472

April 14, 1993

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LACE SCHREIBER, Minority Staff Director

The Honorable Federico Peña
Secretary of Transportation
U.S. Department of Transportation
400 - 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Peña:

I am writing to express concern regarding the fact that the Department of Transportation has not issued final regulations as required by law in the following matter affecting the private bus industry.

The Motor Carrier Act of 1984 in section 204 required the Secretary to issue regulations that would require private motor carriers of passengers and their drivers to operate under the Federal Motor Carrier Safety Regulations.

In 1985, the Federal Highway Administration (FHWA) issued an Advance Notice of Proposed Rulemaking on this issue, and in 1989 the FHWA published a Notice of Proposed Rulemaking. There has been no further action by the Department on this issue since that time.

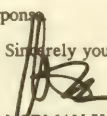
Next year will be the tenth anniversary of the passage of the Act, and still there has not been a final rule issued.

As Chair of the Committee on Public Works and Transportation, I am extremely concerned with the failure of the Department of Transportation to comply with the 1984 Congressional mandate. In fact, the Committee included a provision requiring issuance of the regulations mandated by the 1984 Act in section 311 of H.R. 5753, the Intermodal Surface Transportation Technical Corrections Act, which passed the House last year.

I would appreciate you providing me with a complete report on the status of the rulemaking together with an explanation as to why the final rule has not been issued.

Thank you for your anticipated prompt response.

Sincerely yours,


NORMAN Y. MINETA
Chair, Committee on
Public Works and Transportation

NYM:pr/pk

Ms. PERRY. Thank you very much. Good news.

Mr. RAHALL. Finally, I guess I should state that yesterday we received a letter from Greyhound announcing that the tentative settlement of the 3-year-old dispute with the ATU has been reached, so I would extend my congratulations to Greyhound. If you would relay that to them, Susan, and also ask that their letter to the subcommittee be made part of the record at this point as well.

[The letter referred to follows:]



Greyhound Lines, Inc.

P O Box 660362
Dallas, Texas 75266-0362

93 APR 20 PM 12: 19

April 20, 1993

The Honorable Nick Joe Rahall II
Chairman, Surface Transportation Subcommittee
Public Works and Transportation Committee
2269 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This morning Greyhound, the Amalgamated Transit Union, and the National Labor Relations Board are announcing the terms of a tentative settlement resolving the three-year old labor dispute between the company and the union. Knowing of your continuing interest in the preservation of intercity bus service for low income and rural Americans, I wanted personally let you know about this settlement.

Emerging from Chapter 11 reorganization, Greyhound's management has dedicated itself to a stronger and more positive relationship with its employees through better communication with them. Part of that effort has been a renewed focus on resolving the dispute with the ATU. The union leadership made a similar effort. The result has been that we have reached an agreement which, subject to ratification by the membership, will provide both Greyhound and its employees the opportunity to strengthen Greyhound's intercity bus network and to provide job security for Greyhound employees.

I am delighted to be able to advise you of the removal of this cloud over Greyhound's future. I look forward to continuing to work with you to ensure a bright future for intercity bus service in America.

Sincerely yours,

Frank J. Schmieder
President & CEO

Ms. PERRY. Thank you.

Mr. RAHALL. And Mr. Hanna, our Ranking Minority Member of the full committee, Mr. Shuster, has several questions here to submit to you for response for the record.

Mr. HANNA. Be pleased to, yes, sir.

Mr. RAHALL. This is just for the record.

Mr. HANNA. We will be pleased to do that, Mr. Chairman.

[The following was received from Mr. Hanna:]

RESPONSES TO WRITTEN QUESTIONS ASKED OF THOMAS H. HANNA
PRESIDENT AND CHIEF EXECUTIVE OFFICER
AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
APRIL 21, 1993

QUESTION OF CHAIRMAN RAHALL

Mr. Hanna, can you provide us the estimated cost savings that accrued to the manufacturing industry by efficiently utilizing components of the NHS to control inventory costs?

Response:

If industry reverted back to the inventory system prior to "Just-In-Time", it is estimated inventory costs would double.

It should be noted not all parts are on the "Just-In-Time" inventory control program. "Just-In-Time" is determined by size and price of individual parts. Standardized parts such as nuts, bolts and screws would be examples of "non-Just-In-Time" parts.

QUESTIONS OF REP. BUD SHUSTER

1. Mr. Hanna, in your testimony you talk about the reliance of your industry on just-in-time delivery and give staggering statistics on the amount of traffic in and out of the typical plant. Do you have any statistics that would place a monetary value on the cost of single hours delay in the delivery of parts to one of your member's assembly line?

Response:

Based on AAMA member company estimates, the cost of a single hour's delay would range between \$500,000 to \$1,000,000 per hour. Lost production is unrecoverable, however.

2. Mr. Hanna, what other industries, in your view, are as reliant on highway travel as the automotive industry?

Response:

Among other industries dependent on reliable, efficient highway system would be retail, fast food and perishable products businesses.

-2-

3. Mr. Hanna, you also discuss the benefits to be gained from the organized incremental introduction of IVHS Technology. Can you detail some of the problems that may be faced as IVHS equipped vehicles are introduced into the mainstream?

Response:

IVHS technology, for example through the use of electronic toll and traffic management, offers the potential for reducing travel time and fuel consumption while improving air quality and driver disposition and performance. Such systems will most likely result in additional electronic systems on vehicles. Some of the additional systems will be installed by vehicle manufacturers. Some of the additional systems will be installed as aftermarket or add-on equipment. Some of the IVHS applications may use part of the vehicle electronic systems for interrogation by an off-board electronic system such as electronic toll collection. As interactive electronic modules proliferate the vehicle population, tests concerning electromagnetic radiation and immunity to radiation must be undertaken to continue safe vehicle operation for a mix of vehicles with and without IVHS electronic modules. The tests must be structured to not only reflect the susceptibility/radiation from a single vehicle but should anticipate levels consistent with all environmental sources, including items such as, vehicle densities normally encountered, broadcast stations, airport radars, and medical facilities.

Mr. RAHALL. One final housekeeping chore, is that the subcommittee will resume its oversight hearings next Tuesday, 10:00 a.m., in Room 2167 and our lead-off witness will be Secretary Peña. That is it.

The subcommittee stands in recess, thank you.

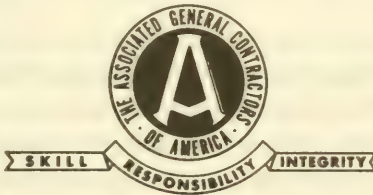
[Whereupon, at 4:25 p.m., the subcommittee recessed.]

**Testimony of
Bill B. Armstrong, Jr.
of**

The Associated General Contractors of America

**Presented to the
Surface Transportation Subcommittee
United States House of Representatives
April 21, 1993**

**On the Topic of
The Implementation of the Intermodal Surface
Transportation Efficiency Act of 1991**



The Associated General Contractors of America (AGC) is a national trade association of more than 33,000 firms, including 8,000 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing development.

The Associated General Contractors of America
1957 E Street N.W., Washington, D.C. 20006-5199, (202) 393-2040, Fax (202) 347-4004

Good morning, Mr. Chairman and members of the Subcommittee. My name is Bill Armstrong, Jr. I am a highway contractor from Roswell, New Mexico, and this year's Chairman of the Highway Division of the Associated General Contractors of America.

AGC commends you, Mr. Chairman, for holding these important oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 -- commonly known as ISTEA. AGC appreciates the opportunity to express its views on a number of issues in the implementation of the Act.

Full Funding of the ISTEA

AGC urges Congress to fully fund the Intermodal Surface Transportation Efficiency Act and to support the Administration's proposal to redirect the 2.5 cent motor fuel tax, currently going towards deficit reduction, to the Highway Trust Fund.

Enactment of the ISTEA dramatically restructured many elements of the Federal-aid highway program. While authorizing a significantly higher level of federal support for surface transportation programs, the Act also empowers local decision-makers and metropolitan planning organizations to play a significantly larger role in project planning and selection.

AGC has long advocated the need to increase federal investment to address the well documented backlog of highway and bridge needs. Enactment of ISTEA provided great promise that the federal government would provide the commitment to begin to address these needs. AGC also recognizes that enactment of ISTEA has set the framework to spend down the balance in the Highway Trust Fund.

Unfortunately, the ISTEA promise of increased highway investment has not been fully realized during the first year and a half of authorizations. Through the appropriations process, Congress has effectively cut \$4.4 billion in highway funding from what was authorized for the first two years of ISTEA.

AGC urges Congress to pass the economic stimulus program that fully funds ISTEA and provides funding for vitally needed infrastructure programs. Investing in infrastructure makes America more competitive and creates productive jobs in the construction industry, where unemployment remains above 15 percent, more than twice the national average.

Full funding of the highway program at the levels authorized by Congress in ISTEA, according to the U.S. General Accounting Office, is expected to create a \$12 billion shortfall for the highway account unless the additional gas tax revenues are directed to it. In response to this shortfall, the Administration has called for the 2.5 cent motor fuels tax, currently going to deficit reduction, to be extended and dedicated to the Highway Trust Fund. AGC supports this proposal.

It is worthy of note that, even with the redirection of the 2.5 cents, DOT indicates that highway user fees will have to be further increased to support an adequate highway program after 1996.

Diversion of Highway Trust Fund Revenue

AGC is concerned that the mounting diversion of highway user fees will exacerbate the already troubling backlog of highway and bridge needs.

Throughout the debate on the development of ISTEA, AGC consistently raised concerns about the potential diversion of highway user fees for non-highway purposes. ISTEA significantly increased the competition at the state and local level for limited highway funding. According to the Federal Highway Administration, as of February 1993, \$436 million in Federal-aid highway funding has been obligated for non-highway projects.

Given the tremendous backlog in highway and bridge needs, AGC is concerned about the effect the ISTEA flexibility provisions will have on meeting future highway and bridge rehabilitation needs.

The 1993 U.S. Department of Transportation's report to Congress on the status of the nation's surface transportation system states that the total expenditure on highways by all levels of governments in 1991 was \$81.2 billion, with \$36.1 billion of this being spent for highway and bridge capital improvements. The federal share of this \$36.1 billion was 41 percent in 1991, compared to 44 percent in 1989. As to the capital needs of the nation's highways and bridges, the report finds that \$51.6 billion should be expended annually to just maintain conditions and performance, compared to the 1991 total of \$36.1 billion, and that if conditions and performance are to be improved to acceptable levels the annual capital funding should be \$67.3 billion.

In addition, AGC is concerned about the Administration's proposal to use funds from the Highway Trust Fund to increase funding for high speed rail. This would further erode the balance of the Highway Trust Fund and jeopardize fully funding ISTEA through Fiscal Year 1997, which the Administration has stated that it supports.

AGC is also concerned with the increasing litigation being brought against state departments of transportation over the Clean Air Act conformity of their transportation plans. State and local planners face a significant challenge in complying with the new planning and public participation requirements of ISTEA coupled with the 1990 Clean Air Act Amendments and Americans With Disabilities Act. AGC fears that such aggressive litigation will shut down highway programs and divert valuable resources -- both human and capital -- away from rebuilding America's infrastructure.

The National Highway System

AGC urges Congress to expedite consideration and approval of the designation of the National Highway System (NHS) and ensure that the NHS is adequately funded to meet the identified capital needs.

Congress acknowledged the economic importance of a high quality national highway and bridge network with the inclusion of the National Highway System in ISTEA.

The efficient movement of food, raw materials and manufactured products from place of origin to export facilities is key to America's competitiveness in the world marketplace. With a land area of 3.6 million square miles, however, the U.S. faces transportation challenges unique among the world's economically developed nations.

Road transportation accounts for 15 percent of U.S. Gross Domestic Product and 84 percent of all U.S. spending on transportation. In 1990, trucks handled slightly more than 25 percent of all U.S. freight-ton miles -- up from 22 percent a decade earlier.

The NHS will focus future federal highway funding on international and Interstate routes, as well as on roads that serve major population centers, ports, airports, and international border crossings. While the NHS will include only 4 percent of the nation's existing highway mileage, it is the mileage that carries 40 percent of total vehicle-miles traveled in this country -- including 80 percent of all tourist travel and 75 percent of all heavy truck travel.

Specifically, the NHS will include the 45,300-mile Interstate Highway System, existing major urban and rural arterials, the 15,000-mile defense strategic highway network, and strategic intermodal highway connectors. The NHS will reflect the major demographic and travel changes that have occurred in this country since the designation of the Interstate Highway System nearly 40 years ago.

Much of the NHS is in need of major repair or replacement. On just the present Interstate System alone, 10,500 miles are in either "poor" or "mediocre" condition, according to the U.S. Department of Transportation. An additional 7,300 miles are rated in only "fair" condition. In addition, more than 13,725 bridges on the Interstate System -- 25 percent -- are deficient and in need of repair or replacement.

Crumb Rubber Asphalt Pavement

AGC urges Congress to amend Section 1038 to allow flexibility in the minimum utilization requirements of crumb rubber in asphalt pavement. The minimum utilization requirements should be expanded to allow uses other than in hot mix asphalt pavement.

Section 1038 of ISTEA contains a provision which requires, among other things, that a certain percentage of hot mix asphalt tonnage purchased with Federal-aid funds contain crumb rubber from scrap tires. These minimum utilization requirements are that 5% of the Federal-aid hot mix asphalt tonnage in 1994, 10% in 1995, 15% in 1996 and 20% in 1997 contain crumb rubber.

A recent survey conducted by the American Association of State Highway and Transportation Officials identifies several concerns about crumb rubber modified hot mix asphalt including: increased cost of paving; concerns in some states about potential related health effects from using crumb rubber; and the availability of sufficient crumb rubber to satisfy the mandates of Section 1038. The survey indicates that the cost of full implementation of Section 1038 will be significant, about \$1 billion in 1997 alone. In addition, the potential for recycling has not been demonstrated.

In this survey, states also identify a wide range of potential problems with the mandated use of crumb rubber asphalt. The Texas Department of Transportation reported that, of the seven projects constructed, four have shown considerable premature distress and two completely failed and had to be reconstructed. The Connecticut DOT is concerned with the availability of scrap tires since an electric generating plant in Sterling, Connecticut has the potential to burn the scrap tires generated in the six New England states.

Scrap tires are a significant waste management problem in the U.S. The strategy to resolve this national problem should be to provide a range of options for states to enable them to explore more effective disposal and reuse alternatives than the use of scrap tires in asphalt pavement.

Disadvantaged Business Enterprise (DBE) Program

AGC urges Congress to carefully consider the findings of the GAO study and explore other means of promoting DBE participation that emphasize the development of a DBE's construction experience, business management and financial skills to enable DBE firms to compete in the open competitive market.

The Department of Transportation's Disadvantaged Business Enterprise (DBE) program has been very controversial within the construction industry and has had a significant impact on the way construction contractors conduct their business. Highway construction does not require the specialty subcontractors -- electricians, plumbers, heating and air conditioning contractors -- commonly found in building construction. The DBE program essentially mandated that states and highway contractors create an entire subcontracting market.

Significant efforts have been undertaken by the construction industry to comply with the DBE requirements. Since the inception of the program, the statistics show that DBE participation has increased significantly with the growth of the Federal-aid highway program. What the statistics do not show is the costly and time-consuming efforts of contractors trying to meet the program goals. Most importantly, despite the fact that DOT has administered the DBE program for more than a decade, there is still an insufficient number of eligible DBEs to adequately meet the goals in many areas of the country.

With its excessive emphasis on raw statistical results, DOT's DBE program fuels the already great confusion over the fundamental difference between equal opportunity and rigidly regulated results. It is to equal opportunity that DOT and AGC, and indeed the nation, must remain committed.

AGC met with officials of GAO to share the construction industry's views on issues being addressed in the first phase of the DBE study. AGC is eager to continue a dialogue with GAO as it works to complete the second phase of the study, due in early 1994.

In my view, one of the reasons that the process is not working is lack of communication, nor have we emphasized training and education as a solution. It is my hope that the adversarial relationships that the DBE program has exacerbated in the construction industry can be resolved and a program that emphasizes business training and education can be established.

Last month, one of my first actions as Chairman of AGC's Highway Division was to appoint a Task Force to bring the issue of the DBE program to the forefront in a positive and constructive way to resolve the conflicts between agencies, contractors and DBEs.

Report to Congress on Quality Improvement

AGC opposes any changes to the current federal policy that prohibits the inclusion of guarantee or warranty provisions on Federal-aid highways. Properly designed and constructed projects are ensured before and during project installation through adequate design, properly written specifications, timely materials testing and traditional construction inspection procedures. AGC will continue the positive dialogue of the National Quality Initiative to promote continuous quality improvements in the highway community.

Section 1043 of ISTEA requires GAO to report to Congress on means for improving the quality of highways constructed with Federal assistance. GAO is to consider what effect on quality the inclusion of guarantee and warranty clauses would have on Federal-aid highway contracts.

Highway construction is a team effort between state highway departments and contractors. Acceptance of each stage of construction is mandatory. Once the contract is awarded to the low bidder, the contractor has guaranteed that he or she will perform the work detailed in the plans and specifications. Inclusion of a guarantee/warranty provision unfairly places the entire burden for quality on one member of the team, ignoring the role of designer and agency in ensuring long term pavement life. Including a contractor guarantee and warranty clause in the contract presumes that the design was adequate and that heavy vehicle use can be controlled.

Properly designed and constructed highway projects simply cannot be "guaranteed" after project completion through undue reliance on warranty provisions. Rather, properly designed and constructed projects are ensured before and during project installation through adequate design, properly written specifications, timely materials testing and traditional construction inspection procedures.

Quality is achieved through adequate, objective prequalification and, most importantly, adequate funding levels, proper plans, clear specifications and proper inspection.

AGC currently serves as co-chair of the National Quality Initiative (NQI). The NQI is an important effort between federal and state officials and other private industry organizations to refocus attention on quality improvements in the transportation industry so that we can build on the best highway system in the world. Last December in Dallas, a National Policy on the Quality of Highways was signed by participants of the NQI. A copy of the Policy is attached to my statement.

Summary

Mr. Chairman, AGC again commends you for holding these important oversight hearings. Although the transportation programs are authorized through Fiscal Year 1997, it is imperative that Congress closely monitor the implementation of this legislation which is so critical to the nation's economic health.

Thank you for the opportunity to testify. I would be happy to answer any questions you or the members of the Subcommittee may have.

National Policy on the Quality of Highways

The National Transportation Policy charts a course for leading the United States' transportation system into the 21st century. The Nation's highway network is an essential element of our transportation infrastructure and its quality is critical to America's economic growth and its ability to compete in the world marketplace.

The United States is a world leader in providing quality highways to the customer, the highway user. To maintain this leadership role, this policy is intended to fulfill the requirements of the highway user by providing a durable, smooth, safe, aesthetically pleasing, environmentally sensitive, efficient, and economical highway system, in balance with other modes of transportation.

In support of these principles, therefore, the National Policy on the Quality of Highways is to make a continuing commitment for quality products, information, and services through:

- Proper design, construction specifications related to performance, adherence to specifications, use of quality materials, use of qualified personnel, and sufficient maintenance;
- Constant improvement of highway engineering technology by increasing emphasis on cooperative research, implementation, and technology sharing;
- Flexibility, coupled with responsibility, for designers, contractors, workers, and suppliers;
- Adequate assurances of quality achievement in planning, design, and construction, by owner agencies;
- Incentives that reward achievements and innovations in providing a demonstrated level of value-added quality; and
- Cooperative development of quality management systems and specifications between Federal, State, and local agencies, academia, and industry.

The development and preservation of a high-quality highway system requires a close partnership between all stakeholders; therefore, the undersigned organizations have cooperatively developed this national policy and will strive to fulfill its principles. In witness whereof, it is sealed and signed at Dallas/Fort Worth Airport, Texas, this 10th day of November, 1992.



Osborne Munir

American Association of State Highway
and Transportation Officials



W. J. Perry

Federal Highway Administration



T. C. B. B. B.

American Road & Transportation
Builders Association



Jim Ward

Associated General Contractors of America



M. J. Kuntz

American Concrete Pavement Association



Nike Artt.

National Asphalt Pavement Association



Jim H. Kuntz

American Consulting Engineers Council



Shawn J. Hall

National Ready Mixed Concrete Association

FLORIDALAWTON CHILES
GOVERNOR**DEPARTMENT OF TRANSPORTATION**

605 Suwannee Street, Tallahassee, Florida 32399-0450

BEN G. WATTS
SECRETARY**Testimony of****Thomas F. Barry, Jr., P.E.****Assistant Secretary for Finance and Administration****Florida Department of Transportation****605 Suwannee Street****Tallahassee, Florida 32399-0450****(904) 488-3054****before the****Surface Transportation Subcommittee****Committee on Public Works and Transportation****U.S. House of Representatives****Wednesday, April 21, 1993****Washington, D. C.**

Thank you for the opportunity to appear before this Subcommittee to present the views of the Florida Department of Transportation (FDOT) concerning the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). My name is Tom Barry and I am the Assistant Secretary for Finance and Administration of the Florida Department of Transportation. Secretary Ben Watts is unfortunately unable to be here and I will be presenting our testimony today.

As AASHTO President Wayne Muri has already indicated, part of the reason for Florida's presence on this panel is to share with the Subcommittee some of the intermodal activities which we are doing in the State of Florida. Also, I will briefly touch upon a few suggested ways to build upon the initial momentum of ISTEA -- in order to completely fulfill its forward-thinking vision of surface transportation for this nation.

It is doubly regrettably that Secretary Watts could not be here this morning. Because, in addition to his responsibilities with the Florida DOT, Secretary Watts is the Chairman of AASHTO's Standing Committee on Aviation and also serves as the Chairman of a Task Force (under the jurisdiction of the AASHTO Special Committee on

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Intermodal Issues and Domestic Freight Policy) charged with building an intermodal constituency. Specifically, this AASHTO Task Force has been given the responsibility to:

- Invite the Office of Intermodalism to explain the Administration's goals and to offer the Special Committee's assistance as a point of contact with states,
- Assist the Office of Intermodalism, the Intermodal Advisory Board and the U.S. DOT Transportation Statistics Bureau in establishing work programs. Recommend review of federal modal legislation for the purpose of removing legislative barriers to intermodalism; and,
- Provide recommendations to the National Commission on Intermodal Transportation.

FLORIDA'S INTEREST

Florida clearly has a vital interest in ISTEA and the intermodal provisions contained in it. As the third fastest growing state by percentage, second in absolute numbers, and fourth in population, Florida faces the challenge of moving not only its own people and goods more efficiently, but also the more than 40 million annual visitors with which we share our state's natural beauty and attractions. We lead the nation in the highest ratio of cars to people, and our automobile fleet has been growing by over 250,000 cars per year.

Long before ISTEA arrived on the scene, it became apparent to us in Florida that simply building more highways alone was not the answer to our state's exploding transportation needs. Quite simply, we had no choice but to recognize that an innovative mix of highway and non-highway solutions would be required to begin to solve the enormous transportation problems confronting us in Florida -- a state to which 900 new residents move each day.

INTERMODAL ACTIVITIES

In order to give this Subcommittee a more complete understanding of the full range of intermodal activities presently underway in Florida, I will provide information concerning: 1.) ISTEA-related highlights, 2.) major rail passenger initiatives in Florida, 3.) commuter rail initiatives, 4.) significant rail/intermodal/seaport initiatives, 5.) some of the Department's future intermodal directions, and more.

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- **ISTEA-Related Highlights**

- Maglev Demonstration Project (in Orlando) will combine \$97.5 million in federal funds and \$524.5 million in private funds to provide "seed" funds for initial capital outlay associated with 13.5 mile Maglev demonstration project between Orlando International Airport and the International Drive area.
- Model Intermodal Transportation Plan utilizes \$454,500 to develop a model pilot program for replication by other states and to initiate an intermodal planning process complementary to Florida's existing structure.
- Rail Crossing Hazard Elimination uses the \$1 million made available by the federal designation of Miami-Orlando-Tampa as a high-speed rail corridor.
- Tri-Rail enhancements is \$4.6 million in federal discretionary enhancement funds granted by the federal government directly to Tri-Rail -- or the Tri-County Commuter Rail serving the three heavily populated counties in southeast Florida of Dade (Miami), Broward (Fort Lauderdale), and Palm Beach (West Palm Beach).

- **Rail Passenger Initiatives**

- State purchase of 81 mile Southeast Florida Rail Corridor (SFRC) for \$264 million.
- SFRC Track Capacity & Signal System Capital Improvement Project of \$48 million for fiscal years 1992 through 1996.
- High Speed Rail Route & Market Analyses due to be completed by June 1, 1993.
- Florida Statewide Passenger Rail Development Plan is slated to also be finished on June 1, 1993.
- Maglev Transit Incorporated's 13.5 prototype demonstration project between Orlando International Airport and International Drive (mentioned earlier) is scheduled to be constructed and operational by late 1996.

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- New AMTRAK tri-weekly "Sunset Limited" Intercity Extension between Los Angeles and Miami via Jacksonville and Orlando began on April 4, 1993 and is now operational. New service is projected to increase Florida AMTRAK ridership by over 69,000 patrons in the first year alone.

- **Commuter Rail Initiatives**

- Tri-County Commuter Rail Authority is a permanent operating commuter authority with over 9,000 daily patrons and approximately 30 trains per day. The Florida DOT (FDOT) has tentatively programmed \$8.4 million for operations and \$10.8 million for capital in FY 1992/1993. (State funds are primarily used for rail system development including, but not limited to: stations, parking, and rolling stock acquisition.) Some \$4.6 million in federal funds was provided in FY 1993 Transportation Appropriations Act.
- Central Florida Regional Transportation Authority has been organized and is studying the feasibility of commuter operations within the Orlando area. FDOT's District 5 Secretary is a voting member and District 5 has tentatively programmed \$750,000 for feasibility studies in FY 92/93.
- Tampa Bay Commuter Rail Authority (TBCRA), in its second full year of existence, is organized and investigating the possibility of commuter operations within the Tampa Bay area/Pinellas County. FDOT District 7 Secretary is a voting member and District 7 has tentatively programmed \$97 million for feasibility studies in FY 92/93.

- **Rail/Intermodal/Seaport Initiatives**

- Under Florida's Seaports Program \$8 million per year is authorized for statutory eligible port capital improvement projects.
- To date, 22 seaport improvement projects totalling over \$65 million (including federal, state, and local funds) are underway or complete.

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- FDOT's Intermodal Development Program provides funding for access and linkages to and between the state's numerous seaports and airports, and for intermodal facilities and capital improvements that enhance the efficient transfer of people and goods between modes. For FY 1993 through FY 1997, \$612 million in Intermodal Development funding is programmed to such projects across all 7 FDOT Districts. Of this total, 25 percent represents eligible highway/road projects and 75 percent is comprised of eligible rail access, rail passenger services development (capital acquisitions for commuter rail, equipment, parking, and station improvements), and eligible SFRC capital improvements.

- **Active Rails to Trails Program**

- By mutual agreement between FDOT and the Florida Department of Natural Resources (FDNR), abandoned rail corridors of private rail companies are coordinated between the agencies for public purchase (transportation use and recreation). At present, FDOT has purchased over ten segments of abandoned railroad corridors representing some 153 miles acquired. We are also in the process of obtaining an additional 65 miles of abandoned railroad corridors.

- **Future Directions**

In the future, the Florida Department of Transportation is fully committed to:

- Implement rail passenger service based on intercity rail passenger plan,
- Enhance rail/highway crossing safety through corridor assessment and implementation of active warning devices, crossing closure and grade separation,
- Continue working with major railroads and local governments to preserve rail service, where feasible, through transfer of rail service responsibility to small companies (shortline railroads),

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- Evaluate corridors where rail freight service is abandoned and acquire right-of-way for alternative state transportation or recreational usage,
- Pursue further speed and capacity improvements in the South Florida Rail Corridor,
- Continue to support local government commuter rail authorities in implementing commuter operations where justified,
- Continue technical support and funding for port capital improvements through the Florida Seaport Transportation and Economic Development Council; and,
- Support future priority allocation of state resources for rail/road unmet access needs to and between airports and seaports through FDOT's Intermodal Development Program.

Although not technically a portion of ISTEA (the Intermodal Surface Transportation Efficiency Act) and certainly not under the jurisdiction of this Subcommittee, I would be remiss if I failed to mention aviation at the end of this section dealing with intermodal issues. In our view, airports are clearly an existing intermodal resource for they undoubtedly link regional surface passenger systems to the world, and connect cargo with the global marketplace. In Florida, these airport "intermodal" terminals transfer 83 million passengers annually, and transfer 1.3 million tons of cargo. While not a statistically significant portion of the cargo tonnage moved each year, it does represent 25 percent of the total cargo value and 23 percent of Florida's international cargo value.

SUGGESTED IMPROVEMENTS

As I begin this portion of my testimony on suggested improvements to ISTEA, I would like to make two very important, preliminary points.

Of all states, Florida is probably uniquely qualified to fully appreciate the tremendous "sensitivity" associated with any activity that can be even remotely construed as altering ISTEA in any way. Clearly, it is a well-established matter of record that the State of Florida is less than completely satisfied with the highway allocation formulas contained in ISTEA. However, as I am sure that many in this room will be pleased to hear, I am not here today to address the issue of funding formulas.

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It is my sincere hope that having made this point, at least some of the natural skepticism that may meet any recommended changes made by a donor state can be dispelled.

The bottom line is that the suggested improvements to ISTEA I am about to propose here today have nothing to do with funding allocations and are not some veiled attempt to extract a larger share of federal transportation funding from the federal-aid highway program. Quite simply, these recommendations are based upon the desire for greater program efficiency under ISTEA.

Given the fact that two of ISTEA's major themes were simplification of the federal surface transportation program and movement towards a new federal/state/local government relationship, I would like to offer the following recommendations.

- **Simplification of the Federal Funding Process**

Implementation of the federal ISTEA has revealed much less program flexibility than was envisioned.

Clearly, the programming flexibilities in ISTEA are very positive in nature (such as the ability to "blend" toll-generated funds with federal highway funding, significant opportunities to set a new direction by seeking transportation solutions rather than specific modal solutions, and a leveling of the playing field with uniform matching rates for highway and transit).

However, the added administrative and paperwork requirements of ISTEA, and the fact that Title 23 was not sufficiently modified to allow for efficient implementation, limit these flexibilities and unnecessarily increase overhead and administrative costs. The numerous divisions and sub-divisions of fund allocations, and the added FHWA and FTA program planning oversight and modification requirements are examples.

In our opinion, ISTEA can be viewed as a solid step forward towards the implementation of a responsive, progressive transportation program able to meet the diversity of national transportation needs. However, elimination of outdated requirements is essential to permit states to rapidly and efficiently take full advantage of ISTEA program flexibilities and funding.

Specific examples of where simplification should be applied to ISTEA include the following:

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- Reduce federal highway funding categories from the over fifty at present to just two; one for the National Highway System (NHS) (including the Interstate) and another for all other surface transportation program and public transportation needs (after providing for emergency relief and the federal lands roads programs).
- Make programs more flexible for each state's determination of use. Restore the original concepts of flexibility and efficiency. Too many restrictions exist on fund utilization and project definition to allow state and local officials the necessary leeway to develop solutions to their unique transportation problems.
- Repeal or modify the new federal requirements to develop and submit a three-year State Transportation Improvement Plan for multi-federal agency review and approval. The State of Florida already has in place an extensive five-year planning process which is closely tied into the local government comprehensive planning process. This new federal requirement is a time-consuming duplication of effort at a time when accelerated production is of critical importance to the state and national economies.

● **Continued Movement Towards New Government Relationship**

As you well know, ISTEA established a National Highway System (NHS) consisting of the Interstate and other principal highways of national significance, and the Surface Transportation Program (STP) which consists of all other roads not functionally classified as local or minor rural collectors. The intent of the STP program appears to be a "block grant" type program providing maximum flexibility to state and local government officials in identifying transportation solutions — with a focus on urban mobility, suburban commuting, rural access and modal interlinks.

The federal role of policy and decision-making with respect to environmental protection, safety, energy policy and other areas of national concern is not questioned. However, while ISTEA provides for delegation of program oversight to the states, the lack of modifications to the implementing policies and regulations has not allowed states to enjoy the full benefits intended under this legislation.

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There is a great need for decentralization of decision-making and project approvals wherever feasible. This will promote efficiency, responsiveness and innovation. There is also a need to redirect oversight of the program to techniques that are less resource intensive and time consuming, such as the use of certifications and sampling, while still ensuring proper expenditure of funds.

Many private sector companies are undergoing a transition toward less central control, greater decentralization and increased identification of and responsiveness to customer needs. Accordingly, they are achieving significantly improved results in productivity and product quality. Florida is actively pursuing this approach with decentralization, "right-sizing", and "total quality management" initiatives.

Unfortunately, recent federal actions continue to emphasize centralization and control, albeit at the state level. This certainly appears to be contrary to the original intent of ISTEA. It is the Florida DOT's position that STP program funding should be block granted to the states as originally contemplated and that the overall federal transportation partnership with state and local governments be restructured and changes to the existing programs made to more efficiently use federal funds.

CONCLUSION

The ISTEA represents a new beginning and, with its emphasis on intermodalism and efficiency, embodies the right thinking at just the right time. However, with the passage of any major piece of legislation there are inevitably some "kinks" to be worked out.

As the first portion of my testimony indicates, efforts under ISTEA to facilitate greater intermodalism are having a significantly positive impact all across this country. Yet if ISTEA's promise of efficiency is to be fully realized, the federal management of the surface transportation programs must be streamlined so we can meet the transportation challenges of this decade and beyond.

The Florida Department of Transportation offers its support to this committee, and indeed the entire Congress and the Administration, as it seeks to refine the federal transportation program embodied in ISTEA. I appreciate this chance to make our state's voice heard.

STATEMENT OF E. DEAN CARLSON
EXECUTIVE DIRECTOR
FEDERAL HIGHWAY ADMINISTRATION
U.S DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
APRIL 21, 1993
STATUS OF ISTEA IMPLEMENTATION

Mr. Chairman, Members of the Committee, I welcome this opportunity to speak with you about the Federal Highway Administration's (FHWA) efforts in implementing the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The ISTEA has been characterized as landmark legislation in part because it provides an innovative and comprehensive approach for meeting our transportation needs into the 21st century, and it defines a new role for the FHWA in this process. One of our major, new functions is to ensure that the ISTEA provisions translate into new and broader opportunities to improve our Nation's surface transportation infrastructure.

This is a crucial time in our implementation phase. We are pleased that the President has announced his intention to nominate a new Federal Highway Administrator, Rodney Slater. Mr. Slater is currently the Chairman of the Arkansas State Highway Commission, where he has served since 1987. Also, the Secretary plans to appoint Jane Garvey, Director of Aviation at Boston's Logan International Airport, as the Deputy Federal Highway Administrator. We look forward to working with them as well as with the new leadership of this Committee.

We have provided for the Committee and staff as well as the press here today our publication FHWA Stewardship: Putting ISTEA Into Motion, issued on the first anniversary of the ISTEA; it details a number of the early accomplishments of the FHWA and our many implementation partners. I would now like to highlight our major activities to date and comment on some new developments under the Clinton Administration such as the economic stimulus funding, infrastructure programs such as "Rebuild America" and the Administration's technology initiatives.

Federal, State and Local Interaction

The ISTEA challenges the Federal, State, and local governments to work together, sometimes in new ways, to make the most of the opportunities presented by this landmark legislation. The Federal/State partnership in the highway area has long been recognized as one of the strongest of any Federally assisted program. The ISTEA presents local governments with new opportunities. Now, they have an important role working through Metropolitan Planning Organizations (MPOs) to plan and select transportation projects. A major challenge facing State and local transportation officials responding to increasing needs with limited financial resources. The ISTEA expands the applicability of Federal aid to include construction of new toll roads and much-needed reconstruction of current toll facilities.

These new roles and responsibilities, however, present their own difficulties. While many local officials and advocacy groups have embraced their expanded roles under the ISTEA, others seek guidance and education in defining their new duties. We are working to realize the strong partnership envisioned by the ISTEA

because this relationship is fundamental to the continued success of our implementation efforts. We have a new Secretary who is a former local official and very committed to furthering our relationship with local officials. We believe that conventional approaches to transportation projects must be revised to insure that nontraditional players are fully involved.

Outreach Activities

The FHWA has worked to strengthen the partnership relationships required by the ISTEA by creating and improving ties with our partners at every level, both within and outside of Federal, State, and local governments; helping the MPOs; giving a voice and vision to the diverse public and private interests affected by the ISTEA; encouraging minority and women business enterprise; and working with our long-established partners like the American Association of State Highway and Transportation Officials (AASHTO) and a host of new partners with varied interests in such programs as: enhancements, scenic byways, and recreational trails. We along with our colleagues from other DOT modal agencies have held hundreds of outreach and informational meetings with many diverse groups throughout the country since the ISTEA was enacted.

We are continuing our outreach efforts. In order to ensure widespread distribution, interim ISTEA guidance memoranda were published in Federal Register notices issued on April 23, 1992, and January 4, 1993. The memoranda were developed with an intra-DOT task force made up of representatives from all the modal administrations and the Office of the Secretary. This process ensured that the guidance encouraged States and MPO's to take

advantage of ISTEA's flexibility by considering all possible multimodal and intermodal approaches to passenger and freight transportation issues. We intend to issue additional ISTEA implementation publications in the future. Secretary Peña is strongly committed to issuing regulations on a timely basis and meeting statutory deadlines.

Early in 1992, we established a conference on the FHWA's Electronic Bulletin Board System (FEBBS) to help disseminate guidance on implementing the ISTEA. The ISTEA conference includes nearly 300 questions and answers and 50 policy memoranda on ISTEA implementation, with information from both the FHWA and National Highway Traffic Safety Administration (NHTSA). When the ISTEA conference was opened to the public, the number of calls to FEBBS each month doubled from 2,500 to 5,000. Thus, FEBBS has been an essential component in our efforts to disseminate information and assist State and local officials and MPOs in implementing the ISTEA.

Economic Stimulus

One of the significant elements of the President's economic program is funding for highway construction work. House-passed H.R. 1335, the FY 1993 Emergency Supplemental Appropriations bill, contains generally the same highway provisions as proposed by the Administration in its economic stimulus program. Under H.R. 1335, the FY 1993 Federal-aid obligation limitation would be increased by \$2.976 billion above the current limitation of \$15.327 billion, to \$18.303 billion.

This increase in the obligation limitation, which would be distributed to all the States based on existing law, and

available only for 90 days, would emphasize needed infrastructure investment and would serve to jump-start the economy. The additional obligation limitation would help reduce unemployment and improve our Nation's productivity by increasing funding available for maintaining the condition and performance of our Nation's highways and permitting the States to better address priorities.

The additional funding would create new jobs in the near-term because it would be used for highway projects that are ready to go. DOT estimates that the increased obligation limitation would support 70,000 additional direct and indirect highway construction jobs. Unemployment in the construction industry in general is over 15 percent nationally, and even higher in many States. The transportation component of the economic stimulus proposal would thus serve as a key source for job growth in the construction industry and related businesses.

FY 1994 Long-Term Investment Program

The Administration's FY 1994 budget would provide full funding of the Federal-aid highway program authorized under the ISTEA. In FY 1994, the obligation limitation would be \$18.398 billion, or about \$2.7 billion more than the baseline estimate of \$15.7 billion (the pre-stimulus FY 1993 enacted budget plus inflation). When programs that are exempt from the obligation limitation are considered, the total Federal-aid highway program would be about \$20.5 billion. This level of funding is consistent with the Administration's vision of increased public investment to improve productivity.

Multi-modal availability of funds and expanded project

eligibility have resulted in greater competition for ISTEA funds. Full ISTEA funding for highways is important in order for the transfer and flexibility provisions to work to their fullest potential. Such transferability as well as innovation could suffer in a climate of restrictive spending. In many cases, competition for funds may work against newer programs, especially when they are competing with existing projects that are "on-the-shelf" and ready to go. While the FHWA has done as much as possible to create a level playing field, the amount of funds available is probably the single biggest factor in ensuring that new programs are successfully delivered.

Relative to the future investment proposals, full ISTEA funding would result in the following investment levels:

- FY 1995: Obligation limitation - \$18.3 billion;
 Federal-aid total - 20.7 billion;
- FY 1996: Obligation limitation - \$18.4 billion;
 Federal-aid total - 20.9 billion;
- FY 1997: Obligation limitation - \$18.4 billion;
 Federal-aid total - 21.0 billion;

Thus, under the Administration's highway investment proposal, the total obligation levels for FY 1994 - FY 1997 would be \$8.6 billion higher than the baseline levels. When compared to baseline funding, the Administration's highway investment proposal would result in:

- Improvement of the highway system by supporting more highway resurfacing, restoration, and rehabilitation projects. These projects reduce pavement deterioration and the resulting higher costs of major reconstruction projects.

- Less congestion. We expect to reduce annual congestion costs -- currently estimated to be about \$39 billion in large urban areas -- through advances in Intelligent Vehicle Highway Systems (IVHS) technologies and capital improvements.

- Increased highway safety. In addition to the FHWA's ongoing programs to make the highway environment safer, we are working with the NHTSA to implement the safety belt and motorcycle helmet use provisions of the ISTEA. Safety belts and helmet may not prevent crashes, but they can substantially reduce the consequences of such accidents. The ISTEA's sanctions for failure to enact mandatory belt and helmet laws should expedite implementation in all States of these very important safety measures; to date, 44 States have safety belt laws in effect, and 25 States, the District of Columbia, and Puerto Rico have universal helmet laws. In addition, we hope to make our arsenal of highway safety measures even more effective through the highway safety management systems.

Full ISTEA funding for highways is based on the extension and transfer to the Highway Trust Fund, beginning October 1, 1995, of the 2.5 cent per gallon motor fuel tax currently being paid by motor vehicle operators into the General Fund of the Treasury for deficit reduction. Two cents of this amount would be dedicated to the Highway Account and the remaining one-half cent would be dedicated to the Mass Transit Account of the Highway Trust Fund. Without such additional financing, we project the Byrd Amendment would trigger a reduction in

apportionments as early as FY 1995. Under the Byrd Amendment, unfunded authorizations at the end of the fiscal year in which an apportionment is made must be less than the balance in the Highway Trust Fund at the end of the fiscal year plus revenues anticipated to be earned in the following 24-month period.

To improve our returns on our increased highway investment, the FHWA is focusing on those high pay-off measures which make the best use of current surface transportation dollars, systems, and techniques. These measures include the IVHS, the six management systems, and the National Quality Initiative, a joint FHWA/AASHTO/industry steering committee to focus attention on the issue quality in the highway industry, holds tremendous potential for quality products, information, services through improved planning, design, and construction at the least annual cost. Last November, the FHWA along with leaders in the transportation industry pledged to make a continuing commitment toward the production of quality products and services through a partnership approach.

The Federal Lands Highway Program (FLHP) would be increased under the FY 1994 budget. The FLHP is a coordinated transportation effort dedicated to improving transportation serving and protecting our Nation's Federal lands. The program consists of park roads and parkways, Indian reservation roads, and public lands highways. The FLHP is funded from the Highway Trust Fund with total FY 1993 authorizations of \$445 million for the various categories of Federal Land Highways. The FY 1994 budget would increase the program \$36 million over the ISTEA levels, and would steadily increase thereafter to an additional

\$240 million in FY 1997.

The FLHP funding, both current ISTEA authorizations and proposed increases, is directed to protecting the infrastructure investments through repairs, rehabilitation and reconstruction of existing roads and bridges. A smaller portion of these funds is being used for enhancement activities consistent with Federal land recreation plans, travel and tourism, economic development and preservation plans. A major portion of the proposed FY 1994 FLHP increase funding is for park roads and parkway improvements which have been experiencing a serious, growing backlog of repair and rehabilitation needs. Also, the additional funds for public lands highways and Indian reservation roads would be used to fund greatly needed road improvements.

Implementation of the FLHP under ISTEA has been successful. Coordination efforts with the National Park Service, the Bureaus of Indian Affairs and Land Management, the Forest Service, and other affected Federal agencies to implement the several new ISTEA requirements have been a consistent priority. Building on earlier coordination efforts in 1992, the FHWA and the Bureau of Indian Affairs are currently holding several regional conferences with Indian tribal leaders in response to ISTEA requirements for transportation coordination, and Indian employment, economic development and self-determination.

National Highway System

The National Highway System (NHS) is a vitally important element of the ISTEA and is expected to be a major focus for the Federal-aid highway program into the 21st century. The purpose of the NHS is to provide an interconnected system of principal

arterial routes which will serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and major travel destinations; meet national defense requirements; and serve interstate and interregional travel.

The system, which will be proposed by the Department in consultation with the States and local officials, must be submitted to Congress in December of this year. We are now working cooperatively with the States to meet this important objective. A functional reclassification of all public roads and streets is a key element in developing the proposed NHS. Although we are running a little behind our self-imposed deadline for completing this activity, the States are making an excellent effort to complete this work, and the functional classification should be approved in most States by June 1. We have requested that the States submit their proposed routes for the NHS to the FHWA by the end of this month. Based on discussions with many States over the last few months, we are optimistic that most States will meet this date or file their submissions soon thereafter.

Several western States support an NHS that is larger than the mileage targets given to the States by the FHWA last June. To help achieve a system satisfactory to these States, we will be meeting with representatives from these States on May 11 in Rapid City, South Dakota. During the next several months, we will be working closely with all States to develop a final proposed system for submission to Congress that is responsive to both national and State goals. We are hopeful that Congress will be

able to approve the NHS well in advance of September 30, 1995 to avoid the sanction situation provided in law if Congress does not act. Congressional action is required to prevent impacts on Interstate maintenance and NHS funding, and we are looking forward to working with the various committees and members of Congress to help make the NHS a reality.

Statewide and Metropolitan Planning

The ISTEA requires States to adopt and implement a statewide planning process. This process is intended to encourage the development of transportation systems embracing various modes of transportation in a manner that will serve all areas of the State efficiently and effectively and involve local governments more consistently. The ISTEA recognizes that transportation and air quality goals are interdependent. To this end, we are coordinating our efforts in this area with the Environmental Protection Agency (EPA).

Our proposed regulations would require a multimodal approach to transportation problems and the consideration of the role of transportation within the broader context of community development.

Transportation planning and air quality officials must coordinate early in the development of land use and transportation plans to ensure that air quality concerns are adequately considered. Early coordination is important because local land use decisions often dictate the transportation systems that are needed in metropolitan areas.

Statewide and metropolitan plans should consider and address our concern that transportation systems support the efficient

performance of State economies, including movement of goods, tourism, and recreational development. The cooperative planning process should result in a fiscally reasonable plan providing several alternative methods for reaching specific transportation goals.

To implement these provisions, the FHWA, the Federal Transit Administration (FTA), worked with other DOT modal agencies and the Office of the Secretary to publish proposed rules on metropolitan and statewide transportation planning in the Federal Register on March 2, 1993.

Management Systems

We have also been actively assisting the States in developing the six management systems required by ISTEA in the areas of (1) highway pavement of Federal-aid highways, (2) bridges on and off Federal-aid highways, (3) highway safety, (4) traffic congestion, (5) public transportation facilities and equipment, and (6) intermodal transportation facilities and systems. Although these systems are still under development, we anticipate that they will provide invaluable support to the transportation planning process. The six management systems will guide the States and metropolitan areas in making prudent decisions when using their limited resources to improve the efficiency of the nation's transportation system. For example, with the congestion management system, States, MPOs, local governments, and affected transportation providers (such as transit providers) would monitor traffic congestion in a given area and gather information on the location, extent, and duration of traffic bottlenecks. After analyzing this data, they would

seek to find the most efficient solution to the problem, such as the use of HOV lanes, increased funding for or construction of transit projects, a congestion pricing program.

We published a proposed rule on the systems on March 2, 1993, in the Federal Register, seeking information from the public by the docket closing date of May 3. Rather than imposing overly prescriptive Federal requirements, the proposed regulations identify the desired end goals of the systems and would grant the States and other affected groups flexibility in developing systems which are tailored to their specific needs. Some States already utilize management systems. For example, several States have active operational pavement management systems.

In order to obtain additional input from the public and interested parties for the development of final rules, the FHWA, together with the FTA, scheduled four public meetings on the proposed metropolitan and statewide transportation planning rules, as well as the proposed management systems on traffic congestion, public transportation and intermodal transportation. Meetings have already taken place in San Francisco, Atlanta, and Philadelphia. The final scheduled meeting, in Kansas City, Missouri, ends today.

ISTEA Flexibility and Project Eligibilities

The ISTEA also seeks to foster funding flexibility and transferability. ISTEA created the Surface Transportation Program (STP), providing funds that States and local officials may use for any roads, including the NHS, that are not classified as local or rural minor collectors. Transit capital projects are

also eligible for funding under this program. The FHWA has encouraged State and local governments to utilize the ISTEA funding flexibility and broad project eligibility provisions. Taking advantage of this flexibility, States to date and since enactment have transferred almost \$1.3 billion of their apportionments among the highway categories in FY 1992 and FY 1993.

Similarly, during FY 1992 and the first 5 months of FY 1993, \$331 million of FY 1992 funds from the STP and Congestion Mitigation and Air Quality Improvement (CMAQ) programs were made available for transit projects. In fact, the majority (60 percent) of CMAQ funds have been obligated for projects other than traditional highway projects, including carpools and bicycle and pedestrian facilities. The ISTEA's expanded list of eligible projects and activities provides local areas with the tools to choose projects best suited for their communities.

ISTEA and the Clean Air Act

The Clean Air Act Amendments of 1990 (CAAA), together with the ISTEA, call for significant changes in the way we go about meeting transportation and air quality goals. Because emissions from motor vehicles contribute to air pollution, the CAAA include provisions aimed at reducing vehicle emissions through a combination of cleaner vehicles, cleaner fuels, and requirements for transportation programs and projects to help achieve national air quality goals.

The ISTEA complements the CAAA by providing funding and giving State and local transportation officials the flexibility to use it in ways that will help us develop a balanced,

environmentally sound, intermodal transportation system. In addition to providing the flexibility to achieve the best mix of transportation projects to meet local needs, the ISTEA set up the new CMAQ program, to help fund transportation control measures and other projects intended to meet standards in air quality nonattainment areas. ISTEA also increases the emphasis on multimodal considerations, land use decisions and air quality problems in the transportation planning process.

The CAAA place stringent requirements on States and local areas to develop plans that address air quality needs, and they strengthen earlier requirements to assure that transportation plans, programs, and projects "conform" to the air quality plans. Although the issues are complex and very controversial, the FHWA and the EPA are working together to develop a final rule implementing these provisions as quickly as possible.

The CAAA also provide that the EPA must start the process of imposing highway funding sanctions or other sanctions if States fail to submit air quality plans by legislative deadlines. If imposed, highway sanctions could undermine the FHWA's ability to fund needed transportation improvements. We are therefore working with the EPA to encourage States to meet the planning requirements and avoid sanctions.

Highway and Motor Carrier Safety

The ISTEA continues the commitment of the FHWA to improve safety on the Nation's highways and provides increased funding flexibility. The Nation's annual cost of motor vehicle accidents including deaths, injuries, and property damage is approximately \$137 billion. In 1992, about 39,200 people were killed in

traffic related accidents. Although this is a tragic loss of human life, we do note that this is the lowest fatality toll in 30 years and represents a 16 percent drop in fatalities over the past 4 years. The 1991 truck fatality rates (the latest year for which final figures are available) for combination trucks and medium and heavy trucks were 3.2 and 2.7 fatalities per 100 million vehicle miles, respectively. The national highway fatality rate now stands at about 1.8 deaths per 100 million vehicle miles of travel. This is the lowest ever, just half of what it was less than 20 years ago, and one of the lowest rates in the world.

We hope to contribute to this positive trend by enhancing safety through a number of broad based initiatives, such as the commercial drivers license program, stricter drug and alcohol enforcement, designation of high speed rail corridors to eliminate hazards of rail crossings, and an enhanced Motor Carrier Safety Assistance Program (MCSAP). Under MCSAP, States ensure comprehensive enforcement of commercial motor vehicle safety through roadside inspection of vehicles and drivers as well as carrier terminal reviews. This program requires motor carriers to correct safety violations or face enforcement action.

Special highway safety funds are provided by the ISTEA through a 10 percent set-aside of STP funds. These funds may be used to eliminate safety hazards on existing highways, improve the safety of rail-highway crossings, provide corridor and community safety programs, and develop safety management systems. Through this funding flexibility, the ISTEA encourages innovative, efficient, and effective activities which provide the

greatest safety benefits.

We are also cooperating with NHTSA on several safety projects involving pedestrian and bicycle activities, corridor and community programs, and the safety management system requirements. And together with the Federal Railroad Administration, we are organizing a nationwide plan to remove 25 percent of all rail-highway crossings and are determining how to best use our limited financial resources on crossings in high speed rail corridors.

Intelligent Vehicle Highway Systems

The FHWA is aggressively implementing the national IVHS and other research and technology programs.

A solid foundation has been established through the completion of IVHS AMERICA's "Strategic Plan for Intelligent Vehicle-Highway Systems in the United States" and the Department of Transportation's "IVHS Strategic Plan Report to Congress." Over the course of this spring and summer, we will be working with FTA, NHTSA and IVHS AMERICA to further develop these strategic plans into a National IVHS Program Plan which will describe the research, development, testing, and deployment guideline activities needed to provide IVHS user services.

A full range of priority IVHS research and development (R & D) activities are also now underway with projects sponsored by the FHWA, FTA, and NHTSA. The IVHS R & D funding has grown from about \$5 million in FY 1991, to about \$25 million in FY 1992, and will grow to \$40 million in FY 1993 and more in future years.

Under the IVHS Corridors Program created by the ISTEA, we

are examining six priority corridors for operational tests which will be negotiated each year; in the northeast, a priority corridor runs along I-95 from just north of Washington to Connecticut.

In the Rebuild America initiative, the President proposed IVHS funding increases ranging from \$70 million per year starting in FY 1994 up to \$100 million in FY 1998. A portion of this additional funding would be used for defense technology conversion to support the development of IVHS applications of advanced technologies created by defense firms and the national labs. This funding would be used in cooperative IVHS partnerships with the Department of Defense's Advanced Research Projects Agency programs and with the private sector.

We have also initiated an ambitious automated highway systems (AHS) prototype program which will be funded under the proposed Rebuild America program. By eliminating human error, an automated highway could provide a nearly accident-free driving environment. Automated vehicle control could increase by 2 or 3 times the capacity of present day facilities. Thus, the AHS presents an exciting opportunity to gain dramatic congestion and safety benefits from IVHS technology. As a first step for AHS, we expect to use current IVHS R & D funds to let contracts in May and June 1993 to conduct studies aimed at examination of critical technical and systems issues. We also plan to work with one or more consortia to meet the ISTEA requirement to demonstrate a prototype AHS in 1997 and to further develop and test other promising concepts.

Conclusion

I conclude by stating that I look forward to working with the Committee in the future on such projects as the NHS and IVHS as we continue to redefine our Nation's surface transportation system.

The ISTEA challenges the FHWA, States, MPO's, and the many new participants in the implementation process to reinvent methods for improving our transportation system. Given the complexity of the legislation, I believe we've moved swiftly to streamline the implementation of the Act and provide clear and comprehensive guidance to these groups. We must work as partners, emphasizing the ISTEA principles of innovation, intermodalism, and flexibility. I look forward to the task.

* * *

Before the
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

APRIL 21, 1993
WASHINGTON, DC

Statement of the
AMERICAN TRUCKING ASSOCIATIONS, INC.
On
The Intermodal Surface Transportation Efficiency Act of 1991

John J. Collins
Senior Vice President
Government Affairs

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I.

Chairman Rahall and members of the Subcommittee, my name is John J. Collins. I am Senior Vice President for Government Affairs of the American Trucking Associations, the national trade association of the trucking industry. ATA's membership includes more than 4100 carriers and suppliers of all sizes and types. ATA is a federation; membership in our 51 state associations and 10 conferences representing different industry segments, combined with ATA's direct membership, totals over 30,000.

I appreciate this opportunity to present the trucking industry views on the role of economic stimulus in transportation infrastructure - a program of critical importance to our industry. My remarks today will concentrate on three areas:

- Funding of ISTEA
- The Importance of the National Highway System
- Stimulating *"The Spirit of ISTEA"*

Before I address these three major areas, I feel it is essential for me to outline the importance of the trucking industry to the well-being of the American economy. Let me try to illustrate the significance of this relationship:

- The trucking industry, as a whole, earns some \$278 billion in annual gross freight revenues, and is responsible for fully 4.9 percent of our gross domestic product.
- The trucking industry employs 7.8 million Americans, and pays them over \$160 billion annually in wages.

Transportation is a significant component of the total cost of all goods. On average 20 percent of the final cost of

goods is the result of transportation expenses. Equally, trucking has a heavy stake in the adequacy of the Nation's transportation infrastructure.

The current status of this important interrelationship is perhaps best summarized in a December 1992 General Accounting Office study:

The trucking industry has played a key role in the growth of the nation's economy...the movement of intercity freight by truck reached 735 billion ton-miles in 1990, an increase of 32 percent from 1980 and 78 percent from 1970. Since the Motor Carrier Act of 1980 made interstate operating authority for trucking companies easily obtainable, the industry has provided increasingly flexible and reliable service, which has received high marks from shippers. In a 1991 survey 484 commercial transportation managers, 87 percent rated trucking service excellent or nearly excellent.

It is equally important to note that 70 percent of the towns and communities in this Nation depend exclusively on trucking to deliver and ship their goods.

II.

The Intermodal Surface Transportation Efficiency Act (ISTEA) was enacted in 1991 with great promise for expanding and upgrading investment in roads, highways, bridges, and mass transit systems. It had the support of the American Trucking Associations.

Although the new Act's \$155 billion authorization over 6 years is unprecedented, infrastructure needs will continue to far exceed available resources. According to US Department of

Transportation estimates, the total federal, state, and local cost just to maintain highways and bridges over the 6-year period, without improvements over 1989 levels, would be about \$250 billion. Moreover, the total cost to improve conditions of highways and bridges during the 6 year period is nearly double the amount--\$425 billion.

A General Accounting Office (GAO) report issued in late 1992 states that without additional revenue to the Highway Trust Fund, the federal-aid highway program will have to be cut back in 1995 or 1996 from its current inadequate funding level. The trust fund shortage projected by the GAO can be averted by redirecting to the fund the 2.5 cents-per-gallon federal excise tax on motor fuels that is now collected for non-transportation purposes to the Highway Trust Fund. We commend Secretary of Transportation Peña's efforts to return the 2.5 cents to the Highway Trust Fund and we would encourage Congress to support these efforts.

Such an effort by Congress coupled with the passage of HR 1335 fully funding ISTEA for FY 1993 would send a clear signal to fully fund ISTEA not only for FY 1993, but for the life of the statute. Such a signal is important. It suggests that a steady, annual flow of projects will be available through the planning and construction process for a significant period of time. This would promote stable, long-term economic growth rather than a process characterized by peaks and valleys. Stability permits long-term investment in people and equipment as well as promoting

stability at the state and local level.

Stability is particularly important with ISTEA because it is a revolutionary program in many ways. Under-funding it would be destructive of its intent. Under-funding would cause local planners and officials to make planning and investment decisions they might not have made otherwise. Under-funding would be destructive as it could lead to an unhealthy competition for scarce financial resources rather than the flexibility intended by the law. Stability is in the enlightened self-interest of the entire transportation community.

III.

In order for a transportation infrastructure economic stimulus package to have lasting value to the Nation, it must be a part of a long-term investment strategy. As noted above, full funding of ISTEA for the life of the legislation is a key financial element in a long-term infrastructure strategy.

A second key element in a long-term transportation infrastructure strategy is a strong continuing commitment to a National Highway System. A National Highway System is the most significant provision of ISTEA to the trucking industry.

The 155,000 mile system consists of 4 percent of the national roads and will carry 75 percent of the nation's truck traffic and 40 percent of the passenger traffic. The NHS's financial and economic relationship to freight is best

demonstrated with three numbers:

Annual federal investment in NHS and Interstate Completion, maintenance and substitution (FFY93 authorized)	\$8.5 billion
Truck Taxes and fees to federal and state government for use of NHS (1991)	\$16.2 billion
Truck Gross Revenues from use of the NHS (1992)	\$240 billion

In existing parts of urban America, essential existing corridors will be made parts of the NHS, providing federal dollars to local agencies to put electronics to work for better traffic flow, provide pedestrian and bicycle overpasses and sidewalks where safety demands, improve lighting and other safety improvements, upgrade bridges, remove bottlenecks and provide needed new capacity.

Further, the NHS is not incompatible with the needs of rural America. ISTEA signals a conscious decision to invest in the infrastructure of rural America. It would be the highest form of folly to connect urban America and not have access to the abundance of the Nation's farms, mines and mills to bring to the cities.

The under-funding of surface transportation infrastructure creates an environment where rural areas are forced to compete with urban areas for scarce federal dollars. The debate over resource allocation overshadows the debate over what is the best solution to transportation mobility. Clearly, there are

financial constraints that require resources to be rationed. Equally clear, Congress could provide additional resources for these programs by freezing investment in such programs as the MAGLEV prototype, preservation of historic railway stations and the IVHS commercial vehicle applications.

While MAGLEV and IVHS Commercial Vehicle Applications may provide benefits in the future, current needs dictate investments to address current issues. Market forces are the best driver of IVHS CVO applications and indeed some highly visible members of our industry are currently applying various sophisticated technologies to improve their productivity. How widespread these innovations can be remains to be seen.

The National Highway System is the centerpiece of federal participation in ISTEA. It is a focal point of America's long-term infrastructure policy. By renewing its commitment to the NHS, Congress sends a strong signal of stability and provides the freight industry with a strong view of a productive future.

IV.

The Spirit of ISTEA is perhaps the most important aspect of the new legislation. As noted above, under-funding changes funding flexibility into funding competition. This forces decision makers at all levels to make choices they might not have made otherwise.

Often those decision makers are, thanks to the Act, the local elected officials who serve on metropolitan planning

organizations (MPOs). ATA has made a concerted effort to reach out to the MPOs. My impression is that this group is making a constructive effort to implement ISTEA at the local level. We respect this effort and would like to see it go forward. Fully funding ISTEA is a form of economic stimulus that would help this process go forward in an orderly manner.

Another key part of ISTEA is the "I" of intermodalism. Congress can renew its commitment to this part of the bill by funding The National Commission on Intermodal Transportation. This eleven member group, of which ATA is honored to be a part, will make an important contribution to fostering the spirit of ISTEA through its investigation of the domestic and international aspects of intermodal transportation and by recommending policies to help the Nation achieve an efficient intermodal system. At this point all eleven members have been appointed. There is some discussion about expanding the Commission to allow the current Administration to make appointments. We support that effort as well as the need to extend the statutory deadline for the Commission's report to Congress and to provide funding to the Commission's efforts.

Further, I would recommend that Congress pay special attention to funding border infrastructure. ISTEA called on the Secretary of Transportation to conduct two studies of border transportation issues and infrastructure needs and report back to Congress this year. Transportation officials in Texas estimate that state alone will need \$2 billion in infrastructure

development over the next decade. Such investments, envisioned in section 6015 of ISTEA, would be an excellent economic multiplier as they would enhance the Nation's ability to implement the North American Free Trade Agreement.

V.

In conclusion, I sincerely believe that fully funding ISTEA will have a positive benefit to our country. Further, I believe that the trucking industry will multiply those benefits. Trucking is safe and economically essential. Fully funding ISTEA will help my industry and the shippers we serve compete more effectively in the global marketplace.

REMARKS BY GRACE CRUNICAN
EXECUTIVE DIRECTOR
SURFACE TRANSPORTATION POLICY PROJECT

BEFORE THE
HOUSE PUBLIC WORKS COMMITTEE
SURFACE TRANSPORTATION SUBCOMMITTEE
APRIL 21, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I WANT TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TO DISCUSS THE IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA). I AM GRACE CRUNICAN, THE EXECUTIVE DIRECTOR OF THE SURFACE TRANSPORTATION POLICY PROJECT (STPP), A BROAD-BASED COALITION OF MORE THAN ONE HUNDRED PUBLIC AND PRIVATE ORGANIZATIONS. STPP CAME TOGETHER IN 1990 TO ASSURE THAT FEDERAL TRANSPORTATION POLICY PROMOTES THE ATTAINMENT OF CRITICAL NATIONAL OBJECTIVES FOR THE ENVIRONMENT, ECONOMIC COMPETITIVENESS AND SUSTAINABILITY, ENERGY CONSERVATION AND COMMUNITY ENHANCEMENT. SOME OF THE ORGANIZATIONS THAT MAKE UP STPP INCLUDE THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS, THE AMERICAN PLANNING ASSOCIATION, THE NATIONAL WILDLIFE FEDERATION, THE BICYCLE FEDERATION OF AMERICA, THE NATIONAL TRUST FOR HISTORIC PRESERVATION, THE TWO ORGANIZATIONS REPRESENTED BY THE OTHER PANELISTS HERE WITH ME TODAY, AND MANY OTHER ORGANIZATIONS.

BEFORE I GET INTO THE DETAILS ABOUT ISTEA IMPLEMENTATION, I WANT TO ADDRESS TWO FUTURE ISSUES: POTENTIAL CHANGES TO ISTEA AND THE NATIONAL HIGHWAY SYSTEM.

WE STRONGLY RECOMMEND THAT THE HOUSE PUBLIC WORKS COMMITTEE AND THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE NOT MOVE

FORWARD ON SUBSTANTIVE CHANGES TO ISTEA AT THIS TIME. SUCH CHANGES ARE PREMATURE WHEN NEW REGULATIONS HAVE NOT EVEN BEEN FINALIZED. ADDITIONALLY, IF THE COMMITTEE PROCEEDS WITH A TECHNICAL CORRECTIONS BILL, WE HAVE TWO URGENT REQUESTS.

ONE, WE REQUEST THAT THE COMMITTEE GIVE THE PUBLIC AN OPPORTUNITY TO REVIEW SPECIFIC LEGISLATIVE LANGUAGE THAT IS BEING CONSIDERED FOR TECHNICAL CORRECTIONS BEFORE THE LANGUAGE IS MOVED FORWARD FOR MARK UP. WE BELIEVE IT IS IMPORTANT TO AVOID ANY QUICK MARK UP OF A TECHNICAL CORRECTIONS BILL AS HAPPENED LAST SEPTEMBER WITH H.R. 5753. AND TWO, WE REQUEST THAT THE COMMITTEE KEEP ANY TECHNICAL CORRECTIONS TO TRUE TECHNICAL CORRECTIONS WHICH CLARIFY AMBIGUITIES AND ENSURE THAT REQUIREMENTS ARE BOTH UNDERSTOOD AND MET WITHIN REASONABLE TIMEFRAMES.

IN THE EVENT THE COMMITTEE DOES PROCEED WITH CHANGES TO ISTEA, STPP OFFERS COMMENTS BASED UPON ITS RESPONSE TO LAST YEAR'S TECHNICAL CORRECTIONS BILL, H.R. 5753, INTRODUCED BY THEN-CHAIRMAN ROBERT ROE. MR. CHAIRMAN, WE ASK THAT OUR ATTACHED MEMORANDUM BE INCLUDED IN THE RECORD. I WILL MAKE REFERENCE TO SOME SPECIFIC RECOMMENDATIONS WITHIN THIS MEMORANDUM IN MY TESTIMONY TODAY.

THE OTHER UPCOMING ISSUE I WANT TO ADDRESS IS THE NATIONAL HIGHWAY SYSTEM. STPP STRONGLY SUPPORTS OPEN AND EARLY CONGRESSIONAL HEARINGS ON THE PROPOSED NATIONAL HIGHWAY SYSTEM. HEARINGS INITIATED IN EARLY 1994 WILL PROVIDE METROPOLITAN PLANNING ORGANIZATIONS AND STATES WITH THE OPPORTUNITY TO INTEGRATE THE PROPOSED NHS INTO STATE AND METROPOLITAN LONG RANGE TRANSPORTATION PLANS USING THE 15 AND 20 PLANNING FACTORS TO IDENTIFY

TRANSPORTATION PRIORITIES.

EARLY EXAMINATION OF THE PROPOSED NHS WILL FURTHER PROVIDE THE OPPORTUNITY TO EXPLORE WHETHER THE CREATION OF A NATIONAL HIGHWAY SYSTEM OR A NATIONAL TRANSPORTATION SYSTEM BEST ACCOMPLISHES THE INTERMODAL OBJECTIVES AND CONGRESSIONAL INTENT BEHIND PASSAGE OF ISTEA. THE AMERICAN PUBLIC TRANSIT ASSOCIATION HAS INITIATED A VERY CREATIVE APPROACH TO THE IMPLEMENTATION OF ISTEA WHICH FURTHERS ISTEA'S MULTI-MODAL AND INTERMODAL EMPHASIS. THEY HAVE DESIGNED A MAP WHICH REPRESENTS A NATIONAL TRANSPORTATION SYSTEM, GOING BEYOND JUST ONE CLASS OF ROAD WITHIN ONE MODE -- HIGHWAYS. YOU WILL BE HEARING MORE ABOUT THIS CREATIVE TRANSPORTATION SYSTEM NEXT WEEK WHEN APTA TESTIFIES DURING THE TRANSIT HEARING.

RETURNING TO THE TOPIC OF ISTEA IMPLEMENTATION, THERE ARE SEVERAL ISSUES THAT NEED TO BE ADDRESSED. ONE OF THE GREATEST PROBLEMS WE HAVE ENCOUNTERED IS THE SLOW PACE AT WHICH USDOT HAS PROMULGATED ISTEA REGULATIONS. ISTEA CHANGED MANY OF THE RULES FOR HOW TRANSPORTATION DECISIONS ARE MADE. IS ESTABLISHED NEW DECISION-MAKING AUTHORITY FOR MPOs, REQUIRED TRANSPORTATION PLANS TO CONFORM TO CLEAN AIR REQUIREMENTS, AND ALLOWED GREATER FLEXIBILITY OF FUNDS. THESE FUNDAMENTAL CHANGES AND OTHERS ARE NEW TO STATES AND TO REGIONAL AND LOCAL GOVERNMENTS. THESE GOVERNMENTS HAVE TURNED TO USDOT FOR GUIDANCE. THIS GUIDANCE AND RELATED REGULATIONS HAVE MOVED TOO SLOWLY CAUSING STATES AND MPOs TO BE UNCERTAIN ABOUT HOW TO PROCEED. THIS IS EVIDENT IN THE LITTLE AMOUNT OF MONEY THAT HAS BEEN "FLEXED" INTO DIFFERENT SPENDING CATEGORIES. MANY STATES AND MPOs WERE INITIALLY NOT SURE WHAT

PROJECTS QUALIFIED FOR SPENDING AMONG THE MANY CATEGORIES. THE DELAYED REGULATION PROCESS HAS ALSO CREATED SOME SKEPTICISM AMONG REGIONAL AND STATE GOVERNMENTS ABOUT THE FEDERAL GOVERNMENTS' RESOLVE TO IMPLEMENT THE CONFORMITY PROVISIONS.

WHILE THE FEDERAL GOVERNMENT HAS BEEN SLOW TO RESPOND TO STATE AND MPO NEEDS, THIS SHOULD NOT BE THE BASIS TO DELAY STATUTORY DEADLINES, ESPECIALLY THOSE THAT RELATE TO CLEAN AIR REQUIREMENTS. THIS WILL REINFORCE THE SKEPTICISM AND SEND THE WRONG MESSAGE TO THE PUBLIC AS WELL. USDOT AND EPA MUST DO EVERYTHING IN THEIR POWER TO ENSURE THAT STATES AND MPOs ARE MEETING THE EMISSION REDUCTION TARGETS AND TIMELINES THROUGH THEIR TRANSPORTATION PLANS AND PROJECTS.

ANOTHER FUNDAMENTAL PROBLEM STPP HAS OBSERVED IS THE UNCERTAIN DEVELOPMENT OF NECESSARY PARTNERSHIPS BETWEEN THE MANY PLAYERS THAT AFFECT TRANSPORTATION DECISIONS. ONE OF THE IMPORTANT LESSONS WE HAVE LEARNED FROM ISTEA IS THAT TRANSPORTATION DECISIONS AFFECT EVERYONE, AND THEREFORE WE NEED TO ENSURE THAT ALL THOSE AFFECTED GET A VOICE IN THE DECISION MAKING PROCESS. MPOs NEED TO BE GIVEN THE INFORMATION AND MONEY THEY NEED TO BE FULL AND EFFECTIVE PARTNERS IN THE TRANSPORTATION PLANNING PROCESS. AIR QUALITY OFFICIALS NEED TO BE FULLY INTEGRATED INTO THE PROCESS OF CONFORMING TRANSPORTATION PLANS TO AIR QUALITY REQUIREMENTS. TRANSIT OPERATORS NEED TO BE FULL PARTNERS AT THE STATE AND LOCAL LEVEL WHEN IT COMES TO FLEXIBLE FUNDS. AND THE GENERAL PUBLIC MUST BE GIVEN THE GREATEST OPPORTUNITY TO BE INVOLVED IN THE DECISIONS THAT WILL DIRECTLY IMPACT THEIR COMMUNITIES. FEDERAL REGULATIONS

NEED TO PROVIDE BENCHMARKS FOR STATE DOTs TO FOLLOW AS THEY CONTINUE TO FULLY OPEN UP THE DECISION-MAKING PROCESS.

ONE OF THE IMPORTANT GAINS WHICH WAS MADE WITH THE PASSAGE OF ISTEA IS THE ISSUE OF FLEXIBLE FUNDING. THOUGH SOME TRADITIONAL CATEGORIES REMAIN, THERE IS NOW GREATER LATITUDE BETWEEN THE TRANSPORTATION PROGRAMS. THE STP, NHS AND SECTION 9 FUNDS ALL CONTAIN PROVISIONS WHICH ALLOW FLEXIBILITY BETWEEN TRADITIONAL HIGHWAY AND TRANSIT PROGRAMS. THIS FLEXIBILITY WAS USED ONLY TO A SMALL DEGREE DURING THE FIRST YEAR OF ISTEA. THIS IS NOT SURPRISING GIVEN THAT THE BILL WAS SIGNED AFTER THE FISCAL YEAR HAD BEGUN AND TRANSPORTATION IMPROVEMENT PROGRAMS (TIPs) HAD BEEN APPROVED. IT WILL TAKE A WHILE FOR THE "OPPORTUNITY" OF THIS FLEXIBILITY TO SINK IN AT THE LOCAL LEVEL AND HAVE MUCH EFFECT. EVEN THEN, I DO NOT ANTICIPATE A STAMPEDE TO UTILIZE THIS AUTHORITY FOR TWO REASONS.

FIRST, THERE ARE MANY MPOs AND STATES WHICH HAVE BEEN HESITANT TO GIVE UP THE TRANSPORTATION PROGRAMS AND POLITICAL AGREEMENTS OF THE PAST. THEY CALL IT THE "PIPELINE" OF PROJECTS AND ARE HESITANT TO INTERRUPT THE "FLOW." SECOND, CONTROL OF ONE'S FUNDS IS DIFFICULT TO GIVE UP. TRANSIT AGENCIES NO MORE WANT TO "CONTRIBUTE" THEIR VALUED SECTION 9 FUNDS TO NEW METROPOLITAN-WIDE THINKING THAN A COUNTY OR CITY WOULD WANT TO LAY THEIR FORMER HIGHWAY DOLLARS ON THE TABLE FOR CONSIDERATION OF ALTERNATIVE MODES. OLD HABITS DIE HARD. FOR EXAMPLE, ONLY THREE STATES "FLEXED" NHS FUNDS TO THE STP CATEGORY IN FY92. VERMONT FLEXED 50% OF ITS NHS AND MAINE AND MASSACHUSETTS FLEXED 29% AND 6%

RESPECTIVELY. IN TOTAL, HOWEVER, LESS THAN 1% OF THIS FLEXIBILITY WAS UTILIZED.

TWO ADDITIONAL OBSTACLES TO IMPLEMENTATION AT THE STATE LEVEL DESERVE MENTIONING. FIRST, THE GAS TAX IN MANY STATES IS CONSTITUTIONALLY DEDICATED TO ROADS. THIS LIMITS A STATE'S ABILITY TO TAKE ADVANTAGE OF THE FLEXIBILITY PROVIDED BY ISTEA. THE CONSTITUTIONALLY DEDICATED GAS TAXES CANNOT BE USED TO MATCH TRANSIT PROJECTS AND PARTS OF THE ENHANCEMENT PROGRAM INVOLVING AREAS SUCH AS HISTORIC PRESERVATION AND RAIL-TO-TRAIL CONVERSIONS. SINCE THEY DO NOT HAVE LOCAL MATCHES WHICH ARE FLEXIBLE TO NON-ROAD PROJECTS, MANY STATES HAVE BEEN SLOW TO EXPEND THEIR ENHANCEMENT FUNDS AND TO UTILIZE THEIR FLEXIBILITY TO FUND TRANSIT IMPROVEMENTS.

THE SECOND OBSTACLE IS THAT SOME STATES HAVE EXISTING ALLOCATION FORMULAS WHICH PRE-DATE ISTEA. FREQUENTLY THESE FORMULAS DISTRIBUTE FUNDING TO ALL PARTS OF THE STATE AND DON'T MATCH WELL WITH SOME OF THE NEW APPROACHES ISTEA HAS TAKEN -- SUCH AS THE STP SUBALLOCATION AND ENHANCEMENT PROGRAMS. THIS SPRING, SOME STATE LEGISLATURES HAVE ADDRESSED THIS ISSUE. VIRGINIA, FOR EXAMPLE, JUST PASSED SOME CHANGES IN THIS AREA. OTHER STATES WILL POSTPONE THE DISCUSSION OF THIS ISSUE UNTIL AN AGREED APPROACH CAN BE REACHED.

IT IS EXTREMELY IMPORTANT TO STICK WITH THIS FLEXIBLE FUNDING MESSAGE ON THE FEDERAL LEVEL. AS A FORMER DEPUTY DIRECTOR OF TRANSPORTATION FOR THE CITY OF PORTLAND, OREGON, I CAN ATTEST TO THE CONVERSION WHICH CAN ULTIMATELY OCCUR IN A REGION WHEN THEY

STOP THINKING ABOUT NARROW FUNDING CATEGORIES AND START THINKING ABOUT THE REGION'S FUTURE. PORTLAND BEGAN WITH AN INTERSTATE WITHDRAWAL IN 1975, SO IT HAS HAD ALMOST 20 YEARS TO LET THE IDEA SINK IN. WHEN ISTEА WAS PASSED, THE REGION IMMEDIATELY BEGAN DISCUSSING USE OF STP FUNDS FOR LIGHT RAIL. MOST OTHER REGIONS IN THE COUNTRY WILL NEED SOME TIME TO UNDERSTAND HOW FLEXIBILITY CAN WORK TO THEIR ADVANTAGE.

MR. CHAIRMAN, THIS WAS JUST A QUICK OVERVIEW OF THE NEW LEGISLATION AND SOME OBSERVATIONS ON HOW IT IS BEING IMPLEMENTED. IN CLOSING, I ASK THIS COMMITTEE TO HELP BREAK THE PATTERN OF "BUSINESS AS USUAL" AND WORK VIGOROUSLY TO HELP IMPLEMENT THE IMPORTANT NEW POLICY DIRECTIONS SUCH AS FLEXIBLE FUNDING, CLEAN AIR CONFORMITY AND GREATER PARTICIPATION IN THE DECISION MAKING PROCESS WHICH MAKE ISTEА A LANDMARK PIECE OF LEGISLATION. THANK YOU FOR TAKING THE COMMITTEE'S VALUABLE TIME TO STAY ABREAST OF THIS LEGISLATION'S PROGRESS AND FOR THE OPPORTUNITY TO TESTIFY.

SURFACE TRANSPORTATION POLICY PROJECT

1400 Sixteenth Street, N.W., Suite 300, Washington, D. C. 20036
(202)939-3470 Fax: (202)939-3475

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MEMORANDUM

TO: House Public Works
and Transportation Committee
Senate Environment
and Public Works Committee
House Leadership
Senate Leadership
The Honorable Federico Pena
Special Assistants to Pena:
Judith Burrell
Jeff Morales
Jackie Lowey

FROM: The Surface Transportation Policy
Project

RE: Potential Changes To ISTEA

DATE: April 20, 1993

The members of the Surface Transportation Policy Project (STPP) and other supporting organizations are concerned about the possibility of substantive changes to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). We strongly recommend that the House Public Works and Transportation Committee and the Senate Environment and Public Works Committee not move forward on any substantive changes at this time.

However, if the Committee proceeds with a technical corrections bill, we have two urgent requests. First, we urge the Committee to give the public an opportunity to review specific legislative language being considered for technical corrections before it progresses to mark-up. We believe it is important to avoid the type of quick mark-up of technical corrections that happened last September with H.R. 5753. Second, technical corrections should be truly technical in nature. This means clarifying ambiguities and ensuring that requirements are both understood and met within reasonable timeframes.

In the event the Committee does proceed with changes to ISTEA, STPP offers the suggestions below. The following comments are based upon last September's technical corrections, H.R. 5735, introduced by then-Chairman Robert Roe. Our views are presented in three sections: (1) provisions we support in H.R. 5753; (2) provisions we oppose in H.R. 5753; and (3) other amendments we recommend be included if a technical corrections bill is adopted. The provisions listed below in response to H.R. 5753 are in order by Section.

PROVISIONS WE SUPPORT IN H.R. 5753

- * Federal Share [Section 113] -- Support this language which allows the Secretary to reduce or eliminate the non-Federal share of planning costs for Federal-aid highway projects under Section 104(f) of ISTEA. The current non-federal share is 20 percent without any adjustment by the Secretary.
- * Highway Safety Program [Section 142] -- Support the provision that requires the Secretary to submit an annual report to Congress on the progress and activities of the highway safety program.
- * Lead-based Paint [Section 159] -- Support the directive in the Committee Report (H.Rept. 102-833) directing USDOT to "ensure that lead-based paint is not used" in developing revised standards for pavement markings and signs, and to consult with the Environmental Protection Agency concerning lead-based paint. We urge the Committee to use legislative language to ensure this directive is followed.
- * Increased Federal Share [Section 213] -- Support the provision for FTA grants to operate on the same sliding scale as FHWA currently does in States that have public lands in excess of five percent of the total area of the state. This provision brings transit and highway projects on to a level playing field in the non-federal match requirements.

PROVISIONS WE OPPOSE IN H.R. 5753:

- * Transportation Enhancements and Noise Barriers [Section 101(a)(2)] -- Oppose addition of "transportation noise abatement" to the list of activities eligible for transportation enhancement activities as provided in Section 133(d)(2). This would undermine the whole purpose of the enhancement program, which is to fund activities that are above and beyond traditional mitigation measures, as USDOT has recognized. Noise abatement is a classic example of an ordinary mitigation measure, which is appropriately funded through project budgets, not enhancement funds. Funding eligibility for noise barriers would overwhelm the other eligible enhancement activities for a use already covered by transportation project funds. Eligibility of noise barriers

would also diminish the enhancement program's potential for new and varied jobs and for economic investment.

- * National Highway System [Section 103(a)] -- Oppose the unilateral inclusion of High Priority Corridors in the interim National Highway System (NHS). ISTEA establishes a detailed procedure for the review and final approval of the NHS by both Houses of Congress. In the interim period, highways classified as principal arterials shall be treated as being the National Highway System. This places some limit on the size of the NHS, pending the required Congressional approval. Section 103(a) of H.R. 5753 dramatically expands the size of the interim system by including the potentially thousands of miles of highway listed under Section 1105(c) of ISTEA.
- * Waiver of Environmental Requirements [Section 120(c)(5)] -- Oppose Section 120(c)(5) in H.R. 5753 which weakens environmental requirements. Under the toll pricing provisions of ISTEA, a State may loan the Federal share of a toll project to a public or private agency, but may do so "only after all Federal environmental requirements have been complied with and permits obtained." 23 USC 129(a)(7). H.R. 5753 weakens this important constraint by requiring only that "the National Environmental Policy Act of 1969 has been complied with." No permits are required, compliance with NEPA may apparently be determined by the borrowing agency, no Clean Air Act compliance is mandated, and no Clean Water Act requirements must be met. A similar lenient environmental test is applied to loans made under Section 137(c)(3) of H.R. 5753 -- the State Revolving Fund provision. STPP strongly opposes this amendment, which would allow federal funds to be used to finance projects which may be in violation of federal environmental statutes.
- * State Certification [Section 122(a)] -- We recommend that the current reference to Governor should be retained without adding reference to "designee." The proposed statewide planning regulations released March 2, 1993, specify "the Governor or his/her designee..." but do not provide any direction on the form the designation is to take -- written or oral -- or who is to be notified. Moreover, this explicit provision for a designee is inappropriate and is inconsistent with the way in which this issue has been handled previously when the Governor was specifically referenced in prior Title 23 statutes.

Congress specifically, and for good reason, placed approval authority in the hands of the Governor, who is the most visible and accountable state public official. There was deep concern expressed during development of ISTEA that this responsibility not rest with appointed state officials. The new multidisciplinary approach to transportation in ISTEA

requires that the Governor retain a strong role in transportation decisions. The Governor, and only the Governor, should have oversight responsibilities for transportation, economic development, air quality, energy and other matters that cut across agency lines.

- * Safety Belt and Motorcycle Helmet Provisions [Section 131] -- Oppose reduction of authorized funding levels from \$65 million to \$57 million. This program is underfunded and has been proven effective where adopted.
- * State Revolving Loan Fund [Section 137] -- Oppose language which allows any grant program or segment thereof under Title 23 to be converted into a loan program. If any Title 23 funds are to be loaned, it should be done on a piecemeal basis and only after approval by the MPOs and States affected. Such decisions should not provide the opportunity to convert such a grant program to a revolving loan program. Turning grants into loans allows suballocated funds to specific areas to be turned into loans to any area within the State, thereby possibly undermining funding to ISTEA programs such as the Surface Transportation Program, the Congestion Mitigation and Air Quality Program, and Transit.
- * Highway Safety Programs [Section 142] -- Oppose language which makes six program areas mandatory and other areas optional for State highway safety programs. Leave the Section 402 Highway Safety Program as it is except for the technical correction language related to the submission of an annual report. We are concerned that pedestrian and bicycle safety would be an optional program while other programs would become mandatory.
- * Entrepreneurial Transportation Services Program [Section 201(d)] -- Oppose this provision which seeks to authorize funding for an expanded entrepreneurial transportation services program by mandating that \$3 million of Section 3 money be earmarked for these projects. This program is duplicative of program funding already provided under Section 26 of ISTEA. At a time when the Section 3 program is underfunded in the face of urgent needs, we do not believe this program should be selected for additional funding. Further, the program selectively funds private sector projects over public transit agencies and provides too much discretionary authority for the Secretary in determining which projects and grants to select.
- * Nonattainment Area Requirements [Sec. 202(c)] -- Oppose striking the language in Section 8(1) which refers to carrying capacity for single occupancy vehicles (SOVs). Taking out this language creates ambiguity in the MPO planning process, i.e. confuses purposes of transportation improvement programs

(TIPs) and congestion management system elements, and may leave open the opportunity to expand SOVs with transit monies.

- * Earmarking of Enhancements -- Oppose earmarking of enhancement funding which, as stated in ISTEA, States are to spend according to priorities developed by the States and the MPOs in their planning process.

PROPOSED AMENDMENTS FOR TECHNICAL CORRECTIONS
(Listed in Alphabetical Order)

If Congress decides to proceed with substantive changes, we urge you to consider these additional changes.

- * Bicycle Transportation and Pedestrian Walkways [Section 139 of H.R. 5753] -- Support a new section which requires a State to include in highway projects those bicycle and pedestrian facilities included in the State's transportation improvement program. Section 139 of H.R. 5753 can be improved by deleting section (1) reference to "...transportation improvement plan developed under section 135" and insert "...and metropolitan planning organizations' long-range transportation plans and transportation improvement programs developed under sections 134 and 135". This provision was intended to be in the original version of ISTEA but was left out by accident.
- * Control of Outdoor Advertising -- Amend Section 1046(r), Removal of Illegal Signs, to include the specific date..."not later than March 18, 1994." This amendment clarifies Congress' intent and will give FHWA more authority to require that States meet this aspect of effective control.
- * Corridor Preservation and Non-Attainment Areas -- In non-attainment areas, require a list of corridors to be preserved under Section 108(c) to be submitted at the time the revised SIP is due in 1994 so that corridor preservation proposals can be developed which are compatible with the new SIP.
- * Data Collection for the Surface Transportation Program -- Under the current legislation, and subsequent USDOT guidance, States may report the use of Surface Transportation Program (STP) funds annually, by aggregate categories at the State level. All other Title I programs in ISTEA, including the National Highway System, Interstate programs, and the Congestion Mitigation and Air Quality program, are required to report on an ongoing basis at the project level into the Financial Management Information System.

It is crucial to have a detailed central reporting and information collection system at the federal level. Uniform project-level reporting of transportation programs, including STP, will help provide necessary information about the use of flexible funding and will facilitate an approach to transportation research and data analysis that is system-oriented. This will allow the federal government to analyze the success of ISTEA in providing a national transportation system that addresses many different modes.

An amendment should be added to require States to report the use of Surface Transportation Program funds into the Financial

Management Information System in the same way, and at the same level of detail, as they are required to report the use of all other ISTEA Title I program funds.

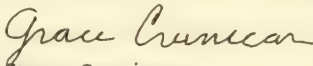
- * Ensuring the Annual Obligation of Enhancement and CMAQ Funds -
- An amendment should be added to ensure the annual obligation of Safety, Enhancement and Congestion Mitigation and Air Quality (CMAQ) funds. Experience to date indicates that some States have failed to fully use their enhancement and CMAQ funds by using obligational authority to only fund traditional highway programs. The legislation should evidence the importance and priority of these critical programs by providing specific annual obligational authority for all of the Surface Transportation Program (STP) and CMAQ funds. Currently, only the mandatory pass through funds provided to urbanized areas with populations over 200,000 are assured of obligational authority.
- * Funding Restrictions for Non-compliers -- USDOT must be explicitly directed to withhold federal funds from States and MPOs who fail to comply with ISTEA requirements. Although USDOT has the authority to withhold funds under existing law, it appears willing to authorize the use of federal funds notwithstanding clear violations of ISTEA. Congress needs to make clear that the mandates of ISTEA must be followed.
- * MPO Planning -- Amendments should be added to ensure that approval of new funding formulas for MPOs must be agreed upon by the State and the MPOs. The Secretary needs to ensure that all MPO funds go to MPOs and none of this money is used by the State for administration. Additionally, when the Secretary certifies MPOs under section 134(i)(5) of ISTEA, the Secretary should report on the distribution of funds to the MPOs for each State. This approach was in Section 8, FTA, but was inadvertently left out of the planning provisions.
- * Regulation Deadlines -- ISTEA established a comprehensive new planning process for states and metropolitan regions, but USDOT has failed to write necessary implementing regulations. Until final regulations are issued, states and localities -- as well as the public -- will be forced to proceed cautiously in reviewing and approving projects. We propose establishing reasonable, but explicit and expeditious, statutory deadlines for promulgation of these essential regulations.
- * Scenic Byways, Safety Belts and Motorcycle Helmets, and Minimum Allocation -- Amend Section 1013 of ISTEA, Minimum Allocation, to exclude both Scenic Byways Grant funds to states for scenic byways programs which are competitively awarded under Section 1047 of ISTEA and seatbelt and motorcycle helmet Safety Incentive Grant funds in Section 153 of Title 23 from the minimum allocation calculation. The fact

that funds awarded under these programs reduce a state's minimum allocation means that the 20 states that receive minimum allocation funds have no incentive to apply for these other categories of funds. Congress enacted the Scenic Byways program in ISTEA as a new merit-based program; therefore, all states should have an equal incentive to apply. Moreover, no other Highway Safety (safety education or enforcement) funds have ever been included in the minimum allocation calculation.

- * Single Occupant Vehicle Capacity -- The prohibition on the construction of new single occupant vehicle capacity in metropolitan communities should be strictly enforced until meaningful congestion management systems have been reviewed and approved by USDOT. USDOT's interpretation of this provision has deemed all existing congestion management practices, no matter how deficient, to sufficiently satisfy the requirements of the Act. As a result, the prohibition has no practical effect. Any changes to ISTEA should reinforce the intent of Congress to constrain new SOV construction pending the development of meaningful management systems.
- * Statewide Planning (1) -- Amend Section 135(f)(4) of ISTEA, "Statewide Planning" to require the Governor to approve the annual State Implementation Plan (SIP) before it is submitted to DOT for approval. This makes the provision congruent with Section 134(h)(1) and ensures that the Governor has an opportunity to examine proposed projects as they relate to other interests reflected in factors to be considered in State planning processes under Section 135(b).
- * Statewide Planning (2) -- Amend Section 135(c) of ISTEA, "Statewide Planning", by adding "the programming of expenditures on transportation enhancement activities as required in Section 133", as the 21st planning factor to be considered by the State in its continuous long range planning process. This factor is now listed as one of the factors MPOs are required to consider in Section 134 of ISTEA, and its inclusion in Section 135(c) increases the consistency between the State and MPO planning process.

We, the undersigned member organizations of the Surface Transportation Policy Project and additional organizations, urge you to adopt this package of provisions. Thank you for your attention and cooperation on this important matter.

Sincerely,



Grace Crunican
Executive Director
Surface Transportation Policy Project

Advocates for Highway and Auto Safety
Amalgamated Transit Union
American Institute of Architects
American Planning Association
American Public Transit Association
Bicycle Federation of America
Center for Neighborhood Technology
Chesapeake Bay Foundation
Energy Conservation Coalition
Environmental Defense Fund
Environmental and Energy Study Institute
Friends of the Earth
Metropolitan Transportation Commission, San Francisco Bay Area
National Association of Regional Councils
National Growth Management Leadership Project
National Trust for Historic Preservation
National Wildlife Federation
Natural Resources Defense Council
Rails to Trails Conservancy
Scenic America
Union of Concerned Scientists

THE CITY OF NEW YORK

OFFICE OF THE MAYOR

DAVID N. DINKINS

TEL. (212) 788-2958

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For Immediate Release:

CHECK AGAINST DELIVERY

REMARKS BY MAYOR DAVID N. DINKINS
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
WEDNESDAY, APRIL 21ST, 1993, NOON

Chairman Rahall and distinguished members of the Committee. Thank you for the opportunity to discuss New York City's experience with the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, known as "ISTEA."

New York City is the transportation center of the country. Our subways and buses carry one-third of all transit riders in America. Our bridges and highways are both engineering marvels and the basis of our city's economic viability.

Given New York's diverse needs -- public transportation, maintenance of the nation's oldest infrastructure, and the new congestion and clean air mandates -- ISTEA represented the most hopeful change in federal highway and transit assistance since the beginning of the interstate system in 1956.

The clarion call of this Act is to build and maintain a transportation infrastructure that will move people and goods in the most energy efficient manner. Members of this committee

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recognized that state and local governments are in the best position to decide how to spend federal transportation dollars.

Before I outline the specific implementation problems we have with this legislation, let me reiterate the importance of increased investment in our transportation system, which is vital if our nation is to remain competitive in the global economy.

Unfortunately, the federal share of investment in transportation infrastructure has actually declined over the last ten years. In the New York region, for example, 57 percent of the transportation infrastructure funding came from Washington in 1980. By 1990, the federal share had dropped to 35 percent.

The 1991 ISTEA bill was ground-breaking in many ways, including the promise of increased federal funds. But sadly, the pot dwindled as it bumped along the road from authorization to appropriation.

Last year New York City received less money under the new and improved version than was received in previous years. The consequences of reduced funding are especially evident in our 872 bridges, 56 percent of which are structurally deficient.

Please note that the New York State Department of Transportation received 160 million dollars last year under ISTEA's Bridge Replacement and Rehabilitation Program. But of that sum, the New York City Department of Transportation received only 4 million dollars. And therein lies one of our problems.

My city did not sit back passively as federal funds were

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reduced. Indeed, we have had to boost our transportation spending over the last ten years.

But this increased commitment has come at a time when the city's fiscal circumstances are severely limited. The unhappy truth is that increased spending on bridges means less money for schools and health care programs.

The increases proposed for the Department of Transportation in the President's budget are a hopeful sign. But despite this encouraging news and the clear intent of Congress, it is uncertain that cities will actually benefit from these additional funds.

One of the most important areas of change between ISTEA and previous transportation bills is that it adopted the goal of substantially increasing the authority of local governments to tailor federal funds to meet the needs of diverse transportation modes.

It did so primarily through Metropolitan Planning Organizations.

Unfortunately that decentralizing goal is far from being met.

ISTEA requires Metropolitan Planning Organizations to cooperate and reach a consensus on projects selected for federal funding. However, because these organizations are made up of local and state transportation agencies who have competing interests -- some of the flexibility that is a hallmark of the

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new bill has been lost in battles between local highway and transit interests on the one hand, and state agencies on the other, over scarce federal funds.

The prominent role given to Metropolitan Planning Organizations makes good sense since localities know the unique characteristics of their transportation system and how to best allocate funds between various modes. Yet our experience with the new bill shows that the Metropolitan Planning Organization process is virtually ignored when funding and project selection decisions are made.

Under ISTEA, Metropolitan Planning Organizations have exclusive project selection authority for certain programs, such as congestion mitigation and surface transportation projects. And in spending other ISTEA funds within their boundaries, localities are on equal footing with the state. This is the theory. The reality is far different.

For example, ISTEA provides Congestion Mitigation and Air Quality funds to help localities comply with new Clean Air Act mandates. New York City was slated to receive 55 million dollars a year in these funds.

As the federal guideline states, localities are responsible for programming these funds. Despite this clear direction, for the last two years these vital air quality monies have been allocated and programmed outside the Metropolitan Planning Organization process -- in fact, New York City has yet to receive

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a single penny under this program to help comply with new Clean Air Act mandates, even though our air quality problems are second only to Los Angeles.

While the federal government is not responsible for the impotence of the Metropolitan Planning Organization process, you should know that the loss of 100 million dollars in federal aid makes it all the more difficult for New York City to comply with new clean air mandates.

And if the city is found in non-compliance with the mandates, we will suffer from the withdrawal of all federal highway funds.

One way to redress this problem is to add legislative language to ISTEA that would allocate a permanent, direct percentage of air quality funds to localities based on the relative severity of the pollution problem within each state.

In addition, there should be a procedure whereby air quality funds are transferred to areas that need them once clean air goals are attained by the original jurisdiction. In this way we would not have to depend on the whims of the state Department of Transportation for city-designated funds.

Our experience with federal funding is not unique to New York. Unless funds are directly provided to cities, they will not necessarily materialize in the areas targeted to receive them.

I recently joined Mayors Daley, Bradley, Flynn, Norquist,

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and Abramson in raising this issue in a letter to Transportation Secretary Peña, specifically suggesting that more federal funds be channelled directly to city projects. With your permission, I will submit that letter for the record.

Another area of concern with ISTEA is that it still does not address funding for preventive maintenance on bridges. ISTEA requires a new management system for bridges, but basic maintenance activities are ineligible for funding.

The experience of New York should serve as a lesson for the rest of the nation. We now have a comprehensive preventive maintenance program in place.

But our bridges deteriorated because earlier generations deferred this essential work in anticipation of federal dollars for reconstruction down the line. We now know that this was penny wise but pound foolish.

Maintaining a bridge is far more cost effective in the long run than reconstruction. As the stated intent of ISTEA is to improve the efficiency of the infrastructure that we have, it makes sense from a financial and public policy perspective to make bridge maintenance activities eligible for federal funding.

I recommend that language be included in future legislation that provides funding for bridge maintenance activities.

I also recommend that Congress lift the 10 percent cap on bridge funds imposed on New York -- the only state to which this cap applies. Were the cap not in place, our state would have

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received more than 1 billion dollars in additional bridge funding over the last decade.

ISTEA was and remains a path-breaking approach to transportation planning and financing -- a recognition of the importance of our transportation infrastructure and our responsibility to rebuild and maintain our nation's public works.

Together we can build on ISTEA's accomplishments and ensure that we leave future generations with an infrastructure that is in far better condition than when we inherited it.

Thank you very much.

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*City of New York**City of Chicago**City of Los Angeles**City of Boston**City of Milwaukee**City of Louisville*

April 5, 1993

Hon. Federico Peña
 Secretary of Transportation
 U. S. Department of Transportation
 400 7th Street S.W.
 Washington, D.C. 20590

Dear Secretary Peña:

As we move forward with our support for President Clinton's Economic Stimulus package -- in which funding for the Intermodal Surface Transportation Efficiency Act (ISTEA) allocation remains a key element -- we wanted to keep you apprised of our growing concern that cities and their individual Departments of Transportation (City DOTs) are not receiving their fair share of ISTEA funds. The federal dollars appropriated for FFY 92 and FFY 93 clearly indicate that DOTs in large urban areas were short-changed by their respective States who control these precious federal transportation allocations.

Clearly, this problem with ISTEA's implementation -- short-changing City DOT projects -- was never the intent of Congress. City DOTs are capable, have priority projects and are ready to put people to work. We are poised for action in order to make the most of the President's Economic Stimulus package. Fully funding the highway portion of ISTEA with an additional \$2.97 billion will provide little comfort to distressed urban areas if the funds continue to be diverted from their intended target.


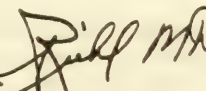
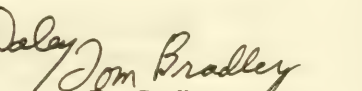
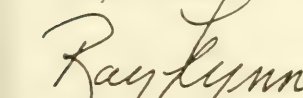
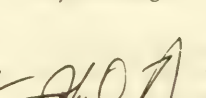

Several of us have mentioned this specific ISTEA problem -- the inconsequential amount of Bridge Replacement and Rehabilitation Program and Congestion Mitigation and Air Quality Improvement Program dollars being spent in cities -- to President Clinton and yourself. We can fully document the inequities under the current implementation of ISTEA. We want to work with the Clinton Administration to redress some of the implementation problem areas with this landmark legislation and provide a fair share of federal transportation dollars for cities and their DOTs.

First, we would like to prevail upon you to use the influence of your office and direct State DOTs to specifically channel more federal transportation funds contained in the FY 93 Supplemental - particularly Bridge Replacement and Rehabilitation Program, and Congestion Mitigation and Air Quality Improvement Program funds - to priority City DOT projects. We also seek your support for strong report language in the FY 94 DOT Appropriations measure stating that "the Congress and the Secretary expects State DOTs to allocate a significant percentage of their federal transportation dollars to cities for use on their priority projects."

Next, it is clear that in the near future cities will need legislative language added to ISTEA that would provide for a permanent, direct percentage of federal transportation funds to City DOTs for priority work in large urban areas. We offer to work with you on devising a fair, balanced approach to solve this problem for cities. We would suggest language that would earmark a percentage of the funds to be allocated to local governments and if those funds were unobligated within the fiscal year then they would revert to the State.

You can rest assured, Mr. Secretary, that if our cities have this problem other urban areas are in the same predicament. We await your response and look forward to working with you on a solution which helps our cities.

Sincerely yours,

 David N. Dinkins MAYOR City of New York	 Richard M. Daley MAYOR City of Chicago	 Tom Bradley MAYOR City of Los Angeles
 Raymond L. Hynn MAYOR City of Boston	 John O. Norquist MAYOR City of Milwaukee	 Jeffry Abramson MAYOR City of Louisville

Statement of
American Automobile Manufacturers Association

***Implementing the Intermodal Surface
Transportation Efficiency Act***

before the
**Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives**

Wednesday, April 21, 1993
2253 Rayburn House Office Building
Washington, D.C.

Presented by
Thomas H. Hanna
President and Chief Executive Officer
1620 Eye Street NW
Suite 1000
Washington, D.C. 20006
202/775-2700

Good morning. My name is Tom Hanna and I am President of the American Automobile Manufacturers Association. AAMA is the trade association for domestic car and light truck manufacturers. Our members are Chrysler Corporation, Ford Motor Company and General Motors Corporation.

U.S. Auto Industry and the National Economy

Automobile and light truck manufacturing ranks among the largest manufacturing sectors of the U.S. economy. By any measure of economic activity, it is one of this nation's industrial cornerstones.

Automobile and truck production in the U.S. contributes more than 4% to total annual Gross National Product. Approximately 300 motor vehicle assembly and parts manufacturing facilities are located throughout the country in 35 states and 200 cities. AAMA members directly employ approximately 800,000 people with over \$25 billion in total annual payrolls.

Motor vehicle related employment, including jobs in related and supporting industries, supports a workforce of more than 12.5 million in the United States — or one in every seven jobs in the nation's economy. The industry is a leading consumer of other major U.S. industries. For example, it purchases: 77 percent of the natural rubber and 50 percent of the synthetic rubber; 63 percent of the malleable iron; 20 percent of all semiconductors; 16

percent of aluminum; and 13 percent of steel, to name just a few of the related industries which are heavily dependent on a healthy, productive auto manufacturing industry.

Importance of the Nation's Highways

We are here this morning to discuss the importance of our nation's interstate highway system, specifically, implementation of the Intermodal Surface Transportation Efficiency Act of 1991, commonly called ISTEA.

Just as a healthy domestic automobile manufacturing industry is an integral part of our country's manufacturing base, so too is our nation's highway infrastructure an essential element of a healthy automobile industry and a healthy economy generally.

Let's look at a few indications of that importance:

- 80% of all intercity passenger miles of travel is carried by cars and light trucks.
- In 1990, over 90% of U.S. households owned a motor vehicle and the daily number of vehicle miles traveled per household was 41 -- compared to 33 in 1977.
- In 1990, highways accounted for 86% of all U.S. passenger and 77% of all U.S. freight transportation expenditures -- over \$800 billion combined, or 18% of the Gross Domestic Product.

These indicators clearly point out the overwhelming preference of most Americans for the freedom and mobility of private transportation. This preference has proven to remain strong even during times of rising fuel costs. For instance, the Office of Technology Assessment has estimated that between 1970 and 1980, the use of public transit for the work commute fell from 8.9 percent to 6.4 percent among all commuters, while personal vehicle use increased from 80.2 percent to 85.7 percent of all commuting modes.

Experts may debate whether this preference for private transportation is an expression of American individualism or simply an expression of practical choice. It is a preference that continues to shape the transportation planning needs of this nation.

As farsighted as President Eisenhower and the Congress were in the late 1950s, when plans were first put in place for a nationwide interstate system of federally-built and managed roads and freeways, I don't think even they could have envisioned the reality that their foresight would produce. Today, the four percent of all U.S. road miles that is represented by the interstate freeway system, carries about 40 percent of all traffic, including 75 percent of heavy duty truck traffic. In addition, the system of non-interstate federal highways, which connects major urban industrial areas and serves as a system of arteries to complement the interstates, is equally important to meeting the transportation demands of the American public.

Importance of Highway System to U.S. Auto Industry

AAMA members' interest in a safe, efficient and well maintained highway system is two-fold. First, our customers depend on such a system to get the best use out of the products we produce. Secondly, we, as manufacturers, very much depend upon the highway system to produce and deliver the vehicles that operate on the system. This second point is even more true today than in years past. In these very competitive times — when "lean production" and "just-in-time" deliveries are the watchwords of the industry — motor vehicle manufacturers depend on timely and safe delivery of parts and components in order to keep the assembly lines moving efficiently — to hold down costs and to stay competitive, nationally and globally.

For example, one goal of "just-in-time" is to reduce costs by minimizing in-plant and in-transit inventories through the use of smaller, more frequent shipments. A modern automotive manufacturing plant using just-in-time inventory would keep only 3-4 hours of many critical parts on hand and rely on the next truck-load to keep the line moving.

According to one of AAMA's member companies, a typical plant receives and unloads an average of 120 truckloads of component parts and supplies daily. The plant then ships approximately 480 vehicles (one half of its daily production) directly to dealers using 60 haulaway trucks. An additional 480 vehicles leave the plant site loaded on multilevel railcars destined to rail unloading ramps located in major market areas. Upon arrival, the rail cars are unloaded and the 480 vehicles are delivered to dealers by another 60 haulaway trucks.

Another domestic manufacturer has some 32 plants operating on a just-in-time inventory system. That means that every single working day some twenty-five-hundred trucks are out on the nation's highways travelling more than one million miles delivering parts and components to those 32 plants just at the point in the production process when they're needed and not an hour sooner. That's what it takes to be competitive these days. That's why a safe, reliable highway system is vital to the economic health of this industry and the nation.

And, yet, we all know that our national highway system is badly in need of improvement and repair. According to the Federal Highway Administration, about half of the Interstate System is in poor condition. Putting the authorities contained in the Intermodal Surface Transportation Efficiency Act (ISTEA) fully to work on this problem, therefore, is essential to the economic strength and future prosperity of this country.

The domestic auto industry's codependence on our national highway system, both as a method of delivery for parts and components, and as the means by which our products are used, makes ISTEA of prime importance to AAMA and its members. For this reason, AAMA supports full funding for ISTEA. Appropriating funding at fully authorized levels is necessary to ensure that the goals of ISTEA are fully and appropriately implemented in the states. I understand that President Clinton and Secretary Peña have indicated their commitment to infrastructure investment, despite the budgetary restrictions currently facing the federal government. The Administration's support for assigning the revenues from the 2.5

cents-per-gallon federal fuel tax now going into the general fund to transportation programs is an encouraging step.

Need for New National Highway System

The Interstate Highway System provided for mobility for this country in the later part of the 20th century. A new National Highway System (NHS) is needed to move us into the 21st Century.

Proposals for a 132,000 to 178,000 National Highway System are in the process of being developed for submission to Congress by the Secretary of Transportation later this year. This new system, which will include the 45,000 mile interstate system, is needed to provide the federal focus for roadway modernization, safety, upgrading and efficiency improvements into the 21st Century. It is needed to help assure that 21st Century vehicles will operate on 21st Century highways.

The NHS will help:

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- * **Promote economic growth** -- through the safe, efficient and reliable movement of people and goods, and bolster the international competitiveness of American Business.
- * **Lessen congestion** -- through better built highways, more efficient traffic management, use of the latest intelligent vehicle highway system technology and additional lanes where needed to improve traffic flow.
- * **Improve air quality and promote energy conservation** -- by reducing congestion. Because vehicles consume more fuel and emit more pollutants when they are idling in traffic, reducing travel time loss due to congestion provides not only economic benefits but environmental benefits as well.
- * **Increase safety** -- National Highway System routes will have high quality design features for maximum safety.

The process for designating the new NHS should proceed expeditiously. Although the statutory deadline for Congress to act is September 30, 1995, AAMA shares the view that the Committee should set an earlier goal for completing this effort.

Making More Progress on Highway Safety Under ISTEA

With the nation's continued reliance on motor vehicle transportation comes the associated responsibility of continued emphasis by all involved parties on the importance of highway safety. I am pleased to report that an important statistic, highway fatalities, continues to decrease. In 1992, motor vehicle related deaths again decreased significantly to the lowest level in 30 years. The projected rate of 1.8 fatalities per 100 million vehicle miles traveled is among the lowest in the world. The Interstate System has played an important role in this success. The fatality rate on the Interstate System has been less than half of that on non-Interstate roads. In addition, we continue to see a correlation between increased seat belt use and the lower number of traffic fatalities.

AAMA and its member companies have strongly supported the enactment of state laws to require the use of safety belts. This support, as evidenced particularly through the efforts of an organization — Traffic Safety Now (TSN) — specifically created for this purpose, has played a major role in achieving passage of such laws in 44 states and the District of Columbia. As a result, belt usage rates have climbed from about 15% in 1984, when the first state (New York) law was enacted, to over 60% in 1992. More importantly, these laws have meant the saving of thousands of lives (more than 18,000 between 1984 and 1990, according to U.S. Department of Transportation estimates).

Accordingly, AAMA supports Section 1031 of ISTEA which was enacted to provide an additional incentive to pass, and promote compliance with, effective belt use laws through

a three-year grant program. A state that fails to meet these requirements stands to have a portion (1.5% in FY 1994) of its allotment under the Federal-aid highway program transferred to its highway safety program (Sec. 402) funds. In its proposed rule issued January 15, 1993, the National Highway Traffic Safety Administration has proposed to implement section 1031 initially by allowing all current state laws to meet the ISTEA requirements for FY 1994 unless a state law includes an exemption from belt use enforcement for vehicles equipped with air bags.

AAMA strongly supports the NHTSA proposal which prohibits exemptions for air bag equipped vehicles. Air bag systems, to be fully protective, *require* the use of safety belts. Seat belts are the primary restraint system in the motor vehicle. Their use must not be considered optional. Presently, Connecticut is the only state with such an exemption. AAMA member companies have supported efforts to repeal this exemption in Connecticut, which unfortunately so far have been unsuccessful.

We point out, however, that the air bag exemption is not the only concern to be found in existing belt use laws. Enactment of these state laws is by no means uniform. The fact that NHTSA would single out this particular defect as the basis for triggering the penalty provisions of ISTEA should not act as a disincentive to pursuing other improvements in these state laws. For example, only 10 of the 44 states with belt use laws provide for primary enforcement. In the other 34 states, seat belt use is only enforceable if the vehicle is stopped for violating some other traffic law. The public perception of a lack of effective enforcement

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is a major deterrent to achieving higher belt use rates thereby saving additional lives. Efforts to obtain primary enforcement in all states should, therefore, continue and not be discouraged.

There are other examples where state belt use laws could be improved. In some states the fines assessed for non-use are so low that they have little effect. Similarly, some states do not yet require belt use by light truck and van occupants or by automobile rear seat passengers. It is important to seek belt use laws in all 50 states and to encourage efforts to improve existing laws. Hopefully, by requiring higher levels of compliance in the third year of the grant program there will be an incentive to make those improvements, as well.

Domestic automakers will continue working with the Department of Transportation, governor's highway safety representatives, local and municipal governments, as well as the Congress and this Committee, to implement measures which make travelling by car safer and safer every year. I can predict with confidence that each year more lives will be saved as more and more drivers buckle up, and as consumers purchase more and more cars and light trucks equipped with other important safety features such as anti-lock brakes and airbags. Of course, as always, these features are most effective when coupled with the increased education efforts of state motor vehicle departments, as well as tough enforcement of traffic and drunk driving laws by states, cities and counties throughout the country.

Applying New Technologies to the Highway System

Finally, I would like to say a word about a project which I know is of great interest to this Subcommittee, as well as to the industry I represent. I refer to the \$660 million research dollars authorized over five years to improve the current transportation system, which includes pursuing intelligent vehicle/highway systems (IVHS).

AAMA fully supports this effort, and the Subcommittee is to be commended for its efforts in fostering IVHS programs. Utilizing computer and advanced electronic technology, the transportation industry is working to make travellers better informed, reduce traffic congestion, increase personal safety and productivity, decrease energy consumption and vehicle emissions.

How do we plan to meet these goals? The IVHS concept is quite complicated, and still pretty new to most people. So I would like to take a few minutes to highlight some of the potential benefits of smart vehicles and highways.

Some of the IVHS technologies under investigation include adaptive cruise control, anticipatory braking, collision avoidance systems, vehicle navigation and automated vehicle identification and location. With regard to highways, the IVHS concept calls for an interactive linking of the vehicle's electronic system to external elements such as roadway sensors, orbiting satellites and centralized traffic management systems to monitor each vehicle's location and area traffic conditions on a real time basis. If traffic was slowing

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further along the vehicle's intended route, drivers would receive alternate route information via two-way communications such as interactive on-board video screens and mapping systems. If a vehicle was involved in an accident severe enough to deploy the airbag, authorities could be automatically notified by the specific vehicle at the time of airbag deployment, giving the exact location of the accident. The data and communications would be immediate and with obvious benefits. The benefits of IVHS are not limited, moreover, to congested urban areas. Some of the benefits have application to rural areas, such as emergency calling.

Such IVHS applications include:

- *Advanced Traveller Information Systems* would provide route planning, maps, the equivalent of the yellow pages for hotels, restaurants, etc.
- *Advanced Traffic Management Systems* would provide traffic flow data, alternate route and other response strategies quickly enough to be useful for combining freeways and surface streets into smart corridors. Besides vehicle data, this type of system would vary traffic light timing to keep traffic moving.
- *Advanced Public Transportation Systems* would improve public access to highly efficient, low-cost mass transit.

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- *Advanced Vehicle Control Systems* would keep your vehicle a proper distance from other vehicles and would keep you in the proper highway lane for the duration of your trip.

I would stress, however, that IVHS will be evolutionary, not revolutionary. IVHS systems will be added to vehicles incrementally and the customer will set the value of service received by his willingness to pay for these features. As vehicles are introduced with IVHS technology, all vehicles must have access to highways, those with and without IVHS systems and the mix of vehicles must be capable of safe operation.

In conclusion, I look forward to working with you, Mr. Chairman, as well as the new Subcommittee Ranking member, Congressman Petri, full Committee Chairman Mineta and Congressman Shuster, who is Co-Chair of the Congressional Auto Caucus. Our shared interest is in maintaining the most efficient, effective and well-maintained federal highway system possible.

AUTOMOTIVE BUSINESSES

CAR • TRUCK • BUS

Motor Vehicle and Equipment Manufacturers and Gasoline Service Stations by State

MOTOR VEHICLE AND EQUIPMENT MANUFACTURERS BY STATE⁽¹⁾, 1989

State	Establishments	Employees	Payrolls (\$00)	Percent of Total State Manufacturing	
				Employees	Payrolls
Alabama	79	12,621	\$ 397,635	3.4%	5.0%
Alaska	-	-	-	-	-
Arizona	54	1,741	39,236	0.9	0.8
Arkansas	51	5,550	102,792	2.6	2.4
California	625	35,040	878,182	1.6	1.3
Colorado	55	2,032	38,896	1.1	0.7
Connecticut	28	2,650	65,157	0.7	0.5
Delaware	4	-	-	-	-
Florida	153	7,009	137,314	1.3	1.1
Georgia	110	15,172	561,658	2.6	4.3
Hawaii	1	-	-	-	-
Idaho	11	349	5,679	0.6	0.4
Illinois	190	28,408	819,317	2.7	2.7
Indiana	332	58,626	1,877,236	9.1	10.5
Iowa	75	10,985	239,344	4.8	4.0
Kansas	52	8,450	202,937	3.4	4.1
Kentucky	58	17,200	580,044	6.3	8.3
Louisiana	24	-	-	-	-
Maine	12	548	9,832	0.5	0.4
Maryland	39	5,147	200,261	2.3	3.2
Massachusetts	49	4,070	120,585	0.7	0.7
Michigan	470	207,999	8,541,627	21.4	25.8
Minnesota	51	4,538	134,788	1.1	1.2
Mississippi	42	6,652	147,289	2.9	3.5
Missouri	123	29,840	1,028,308	6.8	8.8
Montana	11	156	3,002	0.7	0.6
Nebraska	28	3,171	67,343	3.2	3.1
Nevada	11	482	9,991	1.8	1.6
New Hampshire	6	-	-	-	-
New Jersey	93	8,290	289,955	1.2	1.3
New Mexico	11	-	-	-	-
New York	156	23,856	902,998	2.0	2.5
North Carolina	110	15,063	361,446	1.7	2.0
North Dakota	9	710	13,431	4.2	3.8
Ohio	288	86,843	3,707,751	8.8	11.1
Oklahoma	79	10,287	323,519	6.5	8.1
Oregon	60	3,790	101,230	1.6	1.8
Pennsylvania	178	20,581	526,759	2.0	1.9
Rhode Island	14	879	17,185	0.8	0.7
South Carolina	34	8,660	184,809	1.7	2.0
South Dakota	17	1,026	19,798	3.4	3.5
Tennessee	122	20,658	582,358	4.1	5.2
Texas	208	14,665	408,108	1.5	1.6
Utah	23	-	-	-	-
Vermont	7	108	2,727	0.2	0.2
Virginia	59	9,568	269,852	2.2	2.7
Washington	64	2,734	67,318	0.8	0.6
West Virginia	10	725	12,498	0.9	0.8
Wisconsin	96	22,358	704,979	4.1	4.9
Wyoming	-	-	-	-	-
Dist. of Columbia	1	-	-	-	-
TOTAL	4,385	743,218	\$25,192,850	3.8%	4.7%

* Withheld to avoid disclosure

(1) Does not include the Automotive Stamping Industry.

NOTE: Individual states do not add to "U.S. Total."

SOURCE: U.S. Department of Commerce, Bureau of the Census, County Business Patterns, 1989

GASOLINE SERVICE STATIONS BY STATE, 1987

State	Establishments	Sales (\$00)	Employees	Payrolls (\$00)
Alabama	2,229	\$ 1,452,893	10,256	\$ 90,542
Alaska	214	179,436	1,197	16,510
Arizona	1,241	1,584,575	10,430	100,687
Arkansas	1,357	942,262	7,626	81,217
California	9,812	10,742,273	71,074	654,279
Colorado	1,568	1,533,021	10,145	96,955
Connecticut	1,671	1,656,222	10,898	119,781
Delaware	270	284,901	1,897	17,792
Florida	5,933	5,528,589	37,187	340,281
Georgia	3,273	2,987,099	21,286	197,924
Hawaii	355	427,232	3,874	39,024
Idaho	558	443,888	3,202	26,059
Illinois	4,855	4,824,773	29,967	279,449
Indiana	2,854	2,840,217	17,493	154,577
Iowa	2,020	1,420,696	11,100	92,297
Kansas	1,578	1,140,894	8,238	78,180
Kentucky	2,058	1,547,016	11,559	96,077
Louisiana	1,934	1,552,367	10,937	90,619
Maine	673	551,516	3,961	37,505
Maryland	1,846	2,133,889	18,045	154,612
Massachusetts	2,738	2,518,782	18,077	173,734
Michigan	4,164	4,251,908	26,788	240,652
Minnesota	2,289	2,240,300	16,498	145,466
Mississippi	1,374	781,081	6,055	49,107
Missouri	3,119	2,731,085	19,103	175,691
Montana	548	403,140	2,985	25,789
Nebraska	1,163	786,392	6,043	54,480
Nevada	441	522,788	4,462	41,050
New Hampshire	534	491,116	3,335	33,148
New Jersey	3,791	3,140,306	22,607	213,755
New Mexico	696	639,911	4,510	39,822
New York	5,962	4,918,033	30,105	300,589
North Carolina	3,547	2,717,964	18,164	170,272
North Dakota	471	372,071	2,858	24,462
Ohio	5,362	4,925,010	33,703	289,710
Oklahoma	1,705	1,167,344	8,323	73,687
Oregon	1,352	1,043,593	8,958	67,601
Pennsylvania	5,192	4,403,251	31,979	271,263
Rhode Island	487	429,080	2,524	26,671
South Carolina	1,833	1,495,288	10,551	90,512
South Dakota	556	385,703	2,979	25,132
Tennessee	2,491	2,206,641	15,532	136,210
Texas	8,568	7,140,503	44,795	429,982
Utah	849	710,178	5,450	41,376
Vermont	369	268,569	1,941	18,432
Virginia	2,740	2,795,680	18,837	190,286
Washington	2,003	1,734,565	12,177	105,762
West Virginia	1,013	691,216	5,017	44,462
Wisconsin	2,735	2,282,355	16,760	139,510
Wyoming	415	305,006	2,363	22,064
Dist. of Columbia	115	129,050	917	8,568
TOTAL	114,748	\$ 101,997,440	701,890	\$ 8,413,892

SOURCE: U.S. Department of Commerce, Bureau of the Census, 1987 Census of Retail Trade.

EMPLOYMENT

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U.S. Employment in Motor Vehicle and Related Industries by State

EMPLOYMENT IN MOTOR VEHICLE AND RELATED INDUSTRIES BY STATE, 1989

State	Motor Vehicle Related Industries Employment						Total Motor Vehicle Related Industries	
	Motor Vehicle and Parts Mfrs.	Automotive Sales and Servicing	Road Construction and Maintenance	Truck Drivers and Other Employees**	Petroleum Refining and Wholesaling	Passenger Transportation	Employment	Percent of State Employment
Alabama	12,621	52,259	10,649	113,792	3,419	1,991	194,931	15.0
Alaska	*	5,827	4,393	18,905	265	879	30,269	20.8
Arizona	1,741	56,309	11,858	107,040	835	3,473	181,256	14.9
Arkansas	5,550	30,289	7,095	89,550	1,995	*	114,479	15.7
California	35,040	413,801	85,382	886,817	18,285	30,670	1,439,895	13.1
Colorado	2,032	48,552	10,667	113,692	2,070	2,751	179,764	14.8
Connecticut	2,650	49,716	11,071	108,632	1,267	9,935	183,271	12.2
Delaware	*	10,837	3,078	22,832	386	*	37,135	12.3
Florida	7,009	197,467	40,751	384,870	4,818	*	634,915	14.1
Georgia	15,172	100,487	20,222	233,150	3,832	3,499	376,342	15.2
Hawaii	*	16,300	1,859	42,342	277	4,858	65,636	16.0
Idaho	349	14,703	3,034	27,562	973	962	47,583	16.7
Illinois	28,406	153,333	24,350	387,859	8,402	17,646	619,796	13.7
Indiana	58,626	88,004	13,924	184,431	5,226	4,023	354,240	16.8
Iowa	10,985	42,045	10,208	83,751	1,947	2,413	151,349	15.5
Kansas	8,492	35,196	11,258	81,163	3,597	2,858	140,567	16.2
Kentucky	17,200	49,798	12,018	108,402	2,373	1,790	191,551	16.6
Louisiana	*	48,881	17,148	124,502	12,395	2,506	203,430	16.6
Maine	546	18,697	5,959	35,910	1,245	1,461	64,018	14.6
Maryland	5,147	73,447	17,662	143,862	1,740	*	241,858	13.7
Massachusetts	4,070	85,353	13,430	195,737	1,813	17,438	317,841	11.0
Michigan	207,999	135,595	12,736	282,429	4,209	5,011	627,979	18.7
Minnesota	4,538	65,698	16,238	149,941	3,090	8,729	248,434	13.9
Mississippi	8,652	29,075	10,486	63,754	2,732	816	113,515	16.1
Missouri	29,840	80,004	15,963	179,895	3,734	8,283	318,319	16.1
Montana	156	12,479	3,800	22,810	899	1,150	41,294	19.4
Nebraska	3,171	25,211	6,857	54,410	1,362	1,817	92,828	16.5
Nevada	462	22,636	4,216	41,467	414	4,355	73,570	14.7
New Hampshire	*	18,450	4,983	33,030	458	2,330	58,932	12.7
New Jersey	8,280	110,700	24,424	278,529	5,158	29,618	454,707	14.0
New Mexico	*	21,000	6,820	38,478	1,615	2,257	70,170	17.5
New York	23,856	180,198	59,489	530,018	4,565	42,408	840,532	11.8
North Carolina	15,063	91,495	21,315	223,162	5,668	2,875	359,578	13.8
North Dakota	710	10,278	3,115	19,757	1,502	914	36,276	19.0
Ohio	36,843	159,978	25,903	337,406	5,866	7,365	635,366	15.2
Oklahoma	10,287	38,072	11,256	85,873	4,159	*	149,447	16.4
Oregon	3,790	44,805	6,722	88,397	2,071	*	145,785	14.9
Pennsylvania	20,581	182,283	34,590	364,076	10,744	23,488	615,762	13.6
Rhode Island	879	13,564	2,576	27,848	354	1,841	46,882	11.4
South Carolina	8,680	44,751	7,472	104,470	2,611	*	165,964	13.6
South Dakota	1,026	10,297	3,229	19,435	1,143	878	36,016	17.6
Tennessee	20,658	74,186	11,768	158,982	3,582	2,464	271,640	14.8
Texas	14,885	226,943	55,229	528,401	33,019	11,002	867,259	15.3
Utah	*	23,858	4,495	52,118	1,484	955	82,910	15.3
Vermont	108	8,222	2,366	16,973	*	818	28,387	12.9
Virginia	9,688	92,219	23,580	196,899	4,892	*	327,058	14.4
Washington	2,734	84,244	14,789	153,688	4,180	*	239,635	14.5
West Virginia	725	21,805	7,474	47,819	966	1,008	79,397	17.0
Wisconsin	22,356	68,375	11,038	158,548	3,407	11,597	275,323	14.6
Wyoming	*	7,460	3,396	15,967	1,414	437	28,674	22.6
District of Columbia	*	5,331	1,687	25,933	*	979	34,130	8.0
TOTAL ⁽¹⁾	743,218	3,459,065	748,989	7,750,816	203,020	313,468	13,135,898	14.3

* None or not available.

** 1990 data.

(1) Individual states may not add to "U.S. Total".

SOURCE: Compiled by the Motor Vehicle Manufacturers Association of the U.S., Inc. from U.S. Department of Commerce, Bureau of the Census and American Trucking Associations' data.

EXPENDITURES

CAR • TRUCK • BUS

Passenger and Freight Transportation Expenditures

PASSENGER AND FREIGHT TRANSPORTATION EXPENDITURES, 1970-1990

Type of Expenditure	1970	1975	1980	1985	1989	1990
(In Millions of Dollars)						
PASSENGER TRANSPORTATION EXPENDITURES						
HIGHWAY PASSENGER TRANSPORTATION EXPENDITURES						
Auto Purchases and Ownership ⁽¹⁾	\$ 96,397	\$ 156,550	\$ 276,699	\$ 410,313	\$ 467,261	\$ 510,539
Local						
Bus ⁽²⁾	\$ 921	\$ 2,349	\$ 4,649	\$ 6,774	\$ 7,965	\$ 8,290
Taxi	2,145	3,416	5,195	5,636	7,091	7,455
School Bus	1,219	2,174	3,833	5,900	7,330	7,500
Intercity						
Bus	799	1,016	1,709	1,989	2,185	2,000
Total Highway Passenger Transportation Expenditures	\$ 102,061	\$ 165,505	\$ 292,085	\$ 439,612	\$ 511,632	\$ 535,784
Air	10,565	17,792	38,135	50,319	67,667	73,536
Rail	464	924	2,490	3,875	4,449	4,522
Transit ⁽²⁾	920	2,348	4,648	6,774	7,964	8,290
Water	287	294	304	517	863	936
Total Passenger Transportation Bill	\$ 114,317	\$ 186,863	\$ 338,148	\$ 492,067	\$ 592,775	\$ 623,068

FREIGHT TRANSPORTATION EXPENDITURES**HIGHWAY FREIGHT TRANSPORTATION EXPENDITURES**

Truck Intercity						
ICC-Regulated	\$ 14,585	\$ 22,000	\$ 43,000	\$ 54,200	\$ 70,490	\$ 75,400
Non-ICC-Regulated	18,989	25,400	51,551	69,000	80,800	85,200
Truck Local	29,819	37,287	60,545	82,200	105,500	111,800
Bus	122	156	235	245	165	165
Total Highway Freight Transportation Expenditures	\$ 62,494	\$ 84,843	\$ 155,331	\$ 205,645	\$ 256,955	\$ 272,565
Air	1,171	1,838	4,013	6,817	11,853	13,712
Oil Pipeline	1,396	2,220	7,548	8,910	7,832	8,400
Rail	11,869	16,509	27,858	29,150	29,922	30,403
Water	5,257	8,221	15,498	18,449	19,821	20,642
Other	1,791	2,208	3,488	4,642	5,788	5,992
Total Freight Transportation Bill	\$ 83,978	\$ 116,839	\$ 213,738	\$ 273,613	\$ 332,171	\$ 351,714

TOTAL TRANSPORTATION EXPENDITURES

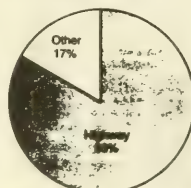
Total Highway Freight and Passenger Transportation Expenditures	\$ 164,575	\$ 250,348	\$ 477,416	\$ 636,257	\$ 768,787	\$ 808,349
Total U.S. Freight and Passenger Transportation Expenditures	\$ 198,295	\$ 302,702	\$ 551,884	\$ 785,710	\$ 924,946	\$ 974,782
Highway Freight and Passenger Transportation Percent of GDP	19.8%	19.1%	20.4%	19.0%	17.6%	17.7%

(1) Includes business expenditures for passenger cars.

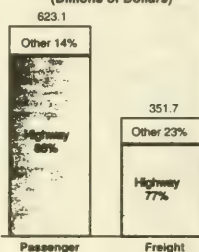
(2) One-half of amount for 'Bus and Transit' shown in source.

SOURCE: Eno Transportation Foundation, *Transportation in America*, December, 1991

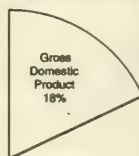
TOTAL PASSENGER AND FREIGHT TRANSPORTATION EXPENDITURES, 1990



TRANSPORTATION EXPENDITURES, 1990 (Billions of Dollars)



TRANSPORTATION EXPENDITURES AS PERCENT OF GROSS DOMESTIC PRODUCT, 1990



TRAVEL

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Demographic and Motor Vehicle Travel Trends

DEMOGRAPHIC AND TRAVEL TRENDS, 1977-1990

Characteristic	1977	1983	1990
Persons Per Household	2.83	2.69	2.56
Vehicles Per Household	1.59	1.66	1.77
No Vehicle	15.3%	13.5%	9.2%
One Vehicle	34.6%	33.7%	32.8%
Two Vehicles	34.4%	33.5%	38.4%
Three or More Vehicles	15.7%	19.2%	19.5%
Licensed Drivers Per Household	1.69	1.72	1.75
Vehicles Per Licensed Driver	0.94	0.96	1.01
Workers Per Household	1.23	1.21	1.27
Vehicles Per Worker	1.29	1.39	1.40
Daily Vehicle Trips Per Household	3.95	4.07	4.66
Daily Vehicle Miles Traveled Per Household	32.97	32.16	41.37
Average Vehicle Trip (Miles)	8.34	7.90	8.87

ANNUAL PERSON TRIPS BY MEANS OF TRANSPORTATION⁽¹⁾, 1977-1990 (In Millions)

Mode	1977	1983	1990
Auto and Van	149,597	167,736	189,526
Truck ⁽²⁾	17,569	23,874	27,006
Subtotal	167,166	191,610	216,532
School Bus	5,994	6,174	6,092
Public Transit	4,696	5,531	4,947
Other ⁽³⁾	3,264	2,496	2,012
All ⁽¹⁾	181,330	205,811	229,583

- (1) Excludes walking and bicycle trips and trips made by persons under 5 years old.
 (2) Household-based trucks, primarily pickups.
 (3) Includes trips made by motorcycle, moped, other private vehicle, and taxi.

COMMUTING PATTERNS OF HOME-TO-WORK TRIP BY MODE, 1977-1990

Mode	1977	1983	1990
Average Commute Distance in Miles			
Auto	9.2	9.9	10.4
Truck ⁽¹⁾	10.6	11.4	13.0
Bus	7.2	8.6	9.3
All Vehicles	8.2	9.3	10.6
Average Commute Travel Time in Minutes			
All Vehicles	20.4	20.4	19.7

⁽¹⁾ Household-based trucks, primarily pickups.

SOURCE: U.S. Department of Transportation, *Summary of Travel Trends, 1990 Nationwide Personal Transportation Survey*.

AVERAGE ANNUAL VEHICLE MILES TRAVELED, VEHICLE TRIPS AND AVERAGE OCCUPANCY PER HOUSEHOLD TRIP PURPOSES, 1977-1990

Trip Purpose	1977	1983	1990
AVERAGE ANNUAL VEHICLE MILES TRAVELED			
Home to Work	3,815	3,536	4,853
Shopping	1,336	1,567	1,743
Other Family or Personal Business	1,444	1,816	3,014
Social And Recreation	3,286	3,534	4,060
All Purposes*	12,006	11,739	15,100
AVERAGE ANNUAL VEHICLE TRIPS			
Home to Work	423	414	448
Shopping	266	297	345
Other Family or Personal Business	215	272	411
Social And Recreation	320	335	349
All Purposes*	1,442	1,466	1,702
AVERAGE VEHICLE OCCUPANCY			
Home to Work	1.3	1.3	1.1
Shopping	2.1	1.8	1.7
Other Family or Personal Business	2.0	1.8	1.8
Social And Recreation	2.4	2.1	2.1
All Purposes*	1.9	1.7	1.8

* Includes other purposes not shown above, such as trips to school, church, doctor, dentist, and work-related business trips.

DISTRIBUTION OF ESTIMATED ANNUAL MILES BY DRIVER AGE AND SEX, 1977-1990

Age	Male			Female		
	1977	1983	1990	1977	1983	1990
16-19	3.2%	2.0%	2.0%	1.6%	1.1%	1.5%
20-34	29.7	26.8	24.3	11.9	12.4	14.6
35-54	27.2	27.0	27.1	10.1	10.9	14.3
55-64	8.5	9.3	6.8	2.8	3.4	2.9
65 & Over	3.7	3.8	4.4	1.3	1.5	2.1
Total	72.3%	70.7%	64.6%	27.7%	29.3%	35.4%

AVERAGE ANNUAL MILEAGE BY VEHICLE AGE

Age in Years	1977	1983	1990
0-2	14,460	15,292	16,811
3-5	11,074	11,902	13,706
6-9	9,199	9,253	12,554
10 or More	6,755	7,023	9,176
Average	10,679	10,315	12,458

Oral Testimony of the

International Bridge, Tunnel and Turnpike Association
2120 L Street, N.W., Suite 305
Washington, D.C. 20515
(202) 659-4620

before the
Surface Transportation Subcommittee
House Public Works and Transportation Committee

**Implementation of the Intermodal Surface
Transportation Efficiency Act of 1991 (ISTEA)**

April 21, 1993

INTRODUCTION

Mr. Chairman and Members of the Committee, my name is Allan Johnson. I am the Executive Director and Assistant Secretary-Treasurer of the Ohio Turnpike Commission. I am a Past President of the International Bridge, Tunnel and Turnpike Association (IBTTA) and currently serve as Chairman of its Government Affairs Task Force. I am joined today by Linda Spock, Program Director for The Port Authority of New York and New Jersey. Ms. Spock also serves as Chair of the Policy Committee for the Northeast Interagency Group. We also are accompanied by Neil Schuster, Executive Director of IBTTA.

IBTTA is the trade association representing the worldwide toll industry. We represent toll authorities in 22 countries on five continents, including over 50 toll agencies in the United States. Member facilities carry in excess of seven billion vehicles a year.

We appreciate this opportunity to testify on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). We are especially pleased to discuss with you and the other Members of this Committee the progress States and toll agencies continue to make when taking advantage of the Federal-aid toll program and Electronic Toll and Traffic Management (ETTM) provisions.

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In the interest of time, I would like to submit our written statement for the record and briefly summarize it for you.

TOLL PROVISIONS

Lawmakers, highway planners and motorists nationwide are giving toll financing increasing support. They realize that there are no free roads and we must explore various funding sources to pay for our surface transportation system.

Due to your leadership, and foresight, ISTEA gives states more flexibility to utilize many funding options, including the ability to blend federal funding (50 percent for roads, and 80 percent for bridges and tunnels) with toll revenues when providing transportation capacity and when addressing traffic congestion. States and toll authorities are taking advantage of these provisions:

1. Four states successfully modified their existing tri-partite agreements allowing tolls to continue as a dedicated source of highway funding, including my State of Ohio.
2. Florida and Puerto Rico have signed respective agreements with the Federal Highway Administration FHWA allowing them to combine toll revenue with federal funds when pursuing various "4-R" activities.
3. Under the Toll Pilot Program, originally authorized in 1987, the first project using up to 35 percent federal funds, is scheduled to open to traffic this coming July in Georgia. Two other pilot projects are still in the construction phase in Delaware and Pennsylvania.
4. Last year, five states used the Credit For-Non Federal Share option, recognizing the amount of toll revenues spent on capital expenditures as a credit towards the State match for federal-aid highway programs, totaling \$676 million.

Toll Concerns

Despite these successful uses, "roadblocks" are often experienced by toll authorities when:

1. Working with respective State departments of transportation.
2. Acquiring information and attempting to pursue various existing federal funding procurement procedures.
3. Communicating to States the many benefits of using public-private funding or investments.

ELECTRONIC TOLL AND TRAFFIC MANAGEMENT

In another area, recent technological advances allow the toll industry to collect tolls electronically in the accurate, efficient and cost-effective manner desired by the motoring public. Using Electronic Toll and Traffic Management (ETTM) systems, motorists can pay tolls in a hands-free, non-stop environment at highway speeds. ETTM provides added toll plaza capacity, lower toll collection costs, reduced fuel consumption, less congestion, cleaner air and increased productivity.

ETTM Current Uses

A number of toll authorities in the United States already use ETTM systems, reporting high performance standards:

1. The largest existing ETTM service, PIKEPASS, is operated by the Oklahoma Turnpike Authority on its 10-road, 550-mile system. The agency has distributed PIKEPASS tags to more than 125,000 local, regional and interstate customers accounting for 30 percent of all toll transactions in Oklahoma.
2. The Texas Turnpike Authority has been operating TOLLTAG, an ETTM system on the Dallas North Tollway since 1989. The system improves the Tollway's efficiency and reduces peak period congestion. This added capacity benefits all motorists, whether they are ETTM subscribers or not. The Tollway has more than 53,000 tags issued to over 36,000 accounts. It processes over 20 million transactions each year virtually without error.

ETTM Future Potential

As a result of these successes, additional toll agencies are exploring ETTM technology for future electronic toll collection and traffic management functions, including the monitoring, collection and reporting of real-time congestion information to motorists. Some toll agencies plan to use federal funds to install ETTM systems available under the IVHS provisions found in ISTEA.

The most notable to date is an effort by seven toll authorities which formed the Northeast Inter-agency Group to select a compatible ETTM system, termed "E-ZPass," for use by motorists throughout the New York, New Jersey and Pennsylvania region. Some 37 percent of all toll transactions in the United States takes place in this region.

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It is anticipated that some of the agencies will begin implementing this technology later this year. Eventually, toll agency officials expect to distribute one million E-ZPass tags for use in several hundred toll plaza lanes.

Interagency Group members have allocated more than \$63 million to fund E-ZPass activities during 1992 to 1996. The Group will also use an additional \$32 million in federal funds available from the Federal Highway Administration under ISTEA.

ETTM Concerns

With the expanding development of IVHS applications, personal communication services and the like, safeguarding radio frequency for reliable cost-effective ETTM operations is a growing concern to the toll industry.

IBTTA continues to oppose any legislation or regulatory initiative that would not provide adequate frequency space for IVHS uses, especially in the 900 MHz band. Many of the ETTM applications I mentioned earlier operate in this frequency. Such action would jeopardize successful ETTM application and seriously hamper those agencies planning to use ETTM in the future. Highway officials could lose the ability to use proven technology to meet regional transportation and telecommunications needs.

RECOMMENDATIONS

Despite these successes and the strong potential for future ETTM development and use, the Association still believes that the Administration and Congress need to take additional steps to fully realize the benefits of ISTEA and its toll provisions. These steps include:

1. Fully funding ISTEA as originally authorized. We applaud the Congress for establishing this spending priority when it recently passed next year's budget resolution.

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2. Extending the 2.5 cents-per-gallon tax on motor fuels (set to expire at the end of 1995 and currently deposited into the general treasury for deficit reduction), and put it immediately into the Highway Trust Fund for transportation spending only. IBTTA is pleased that President Bill Clinton's detailed budget proposal, presented to Congress earlier this month, re-affirms this investment.
3. Protecting the user-fee system when funding our surface transportation network.
4. Adopting technical changes to the ISTEA toll provisions that would clarify the optional loan program and other items. As you are well aware, such language supported by IBTTA, passed the House last year in the Intermodal Surface Transportation Corrections Act.
5. Providing more incentives for state and local governments to examine and adopt innovative funding schemes, especially public-private partnerships.
6. Including toll facilities in the National Highway System (NHS), as directed under ISTEA.
7. Providing additional funding for ETTM research and development, especially considering this service has a proven track record with overwhelming public support.
8. Securing limited available frequency spectrum for operational and future ETTM use.

CONCLUSION

Prior to ISTEA, tolls provided the revenue for road building and improvement endeavors that may not have otherwise taken place, with little or no federal dollars. Despite past Federal restrictions on toll development, we witnessed the successful construction of almost 5,000 miles of toll projects in the United States. These facilities generate over \$2 billion in toll revenues each year, funds which are re-invested in surface transportation infrastructure.

We advocate more use of toll financing as a vital funding bridge linking long- and short-term transportation improvement goals.

Ms. Spock, Mr. Schuster and I are more than happy to answer any questions you might have.

NATIONAL
COAL
ASSOCIATION



JOSEPH E. LEMA
Vice President
(202) 463-2629

STATEMENT OF JOSEPH E. LEMA
VICE PRESIDENT FOR TRANSPORTATION
NATIONAL COAL ASSOCIATION

ON

IMPLEMENTATION OF THE
INTERMODAL SURFACE TRANSPORTATION
EFFICIENCY ACT OF 1991 (ISTEA)

before

SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.
APRIL 21, 1993

Introduction

Mr. Chairman and members of the subcommittee, I am Joe Lema, National Coal Association's vice president for transportation. NCA is the Washington, D.C. -based industry association that represents coal producers, transporters, consumers, and others associated with the production, distribution, and consumption of coal produced in the U.S. NCA's member companies account for approximately 60 percent of the coal produced in the U.S. and shipped by surface transportation modes to utility and industrial plants, and to coal consumers in Canada, Mexico, and overseas.

Total annual coal production in the U.S. during the 90's has reached the one billion tons level, more than 20 percent higher than in 1980. NCA forecasts coal production in 1993 to continue at the one billion tons level, with about 60 percent mined in states east of the Mississippi River and about 40 percent in the western states. Coal shippers are heavy users of trucking, rail carrier, barge line, lake carrier, and dry-bulk ocean carrier services, with the costs of coal transportation services generally amounting to one-third to one-half, and often to two-thirds or more, of coal's delivered price. For that reason, NCA holds a high interest in the implementation of ISTEA, particularly with respect to Title I. Surface Transportation, and Title V. Intermodal Transportation, reflecting on the promise of that important multi-year legislation for leadership in efforts to assure that the nation's surface transportation network will be adequate to meet transportation demands, including the movement of bulk commodities like coal and other freight traffic, in a safe and efficient manner.

1130 Seventeenth Street, N.W.
Washington, D.C. 20036-4677

(202) 463-2625
(202) 833-1965

The U.S. Department of Transportation Should Update the Coal Roads Study Performed by the Federal Highway Administration, and Reported in 1980 (Report No. FHWA/PL/80/01, April 1980)

The Federal Highway Administration, in April 1980, issued a coal roads study report (FHWA/PL/80/01) which provided an estimate of the extent of improvements needed on the nation's coal road systems. A coal road system of more than 34 thousand miles, nearly 90 percent of which was in rural areas, was identified by state and cross-classified on the basis of functional classification and federal-aid system. The study used 1977 base year coal distribution data, with projections to 1985. That professional analysis, performed by FHWA with assistance of two highly regarded consulting organizations and sixteen participating states, developed estimates of construction needs associated with 14 alternative improvement strategies, which range from \$20.4 billion to \$3.9 billion nationally. About 80 percent of the construction needs were found to relate to four states -- Kentucky, Ohio, Pennsylvania, and West Virginia --with the balance of total needs related to other coal-producing states in the east and west.

The 1980 study covered all movements of coal by truck both from mines for transshipment at railroad tipples and barge docks, and from mines directly to utility and industrial plants. That is an important facet of the study, realizing that whereas about 100 million tons of coal now are hauled for the entire distance from mines to consumer plants, usually in trips that range from less than 50 miles to more than 300 miles, the total annual tonnage of coal moved by truck is estimated to be more than double that amount when hauls from mines to railroad tipples and barge docks which generally are under 50 miles in length are added to the shipments made entirely by truck.

Inasmuch as 80 percent of the coal produced is consumed by electric utilities in the U.S. to fuel 56 percent of the electricity produced in the U.S., and various estimates show that the demand for electricity is expected to increase at an annual rate of about 1.5 percent to 3.0 percent through 2000 and the next decade, it is reasonable to assume that the tons of coal carried by truck to utility and industrial plants and to truck-rail and truck-barge transshipment locations will rise substantially above the levels on which the 1980 study findings are based. With that in mind, NCA believes it is desirable and timely, especially in view of the provisions of the six-year ISTEA program under Title I of 1991 Act, to update the 1980 FHWA study on coal roads this year. Results of an updated coal roads study, if it is performed in a timely manner, would be valuable inputs to transportation planning studies eligible for funding under ISTEA's Title I, as the states and metropolitan planning organizations develop plans required for Surface Transportation Programs (STP's) and National Highway System (NHS) programs undertaken in response to ISTEA.

Three factors weigh strongly in support of performing an updated coal roads study in 1993, founded on the solid approach established by the FHWA in its 1980 study report. First, coal is an economic, secure source of clean-burning fuel to generate electricity, with power generation expected to grow significantly. Second, coal producers have more than doubled their productivity in the last ten years, holding down prices of

coal at the mine. Third, coal transporters have made major advances in their productivity, thereby holding down costs incurred by carriers in distributing coal. Examples are the introduction of aluminum bodies for the cargo-carrying units of trucks and railcars, thereby increasing their payload capacities, and the replacement of aging barges with units that have 50 percent more load capacity, all of which has been done through investments of private capital by carriers in coal service. Coal producing and transporting industries, therefore, have equipped themselves with modern technological advances, moves that should be complemented by public investments in transportation infrastructure improvements aimed at upgrading surface freight transportation systems in coal producing areas of the U.S. ISTEA's STP and NHS provisions can be keys to such progress.

A Report to Congress Due September 30, 1993 under Provisions of ISTEA's Title V, Intermodal Transportation Should Consider Coal.

With no intent to suggest that a report due to be presented to Congress by September 30, 1993 under the provisions of Title V of ISTEA might not give a full and complete assessment of intermodal freight transportation, nonetheless, NCA believes it is now worthwhile and timely to underscore the importance of intermodal connectivity and access for the movement of bulk commodities like coal, in addition to non-bulk freight traffic, dedicating particular attention to linkages of surface freight transportation systems at intermodal transshipment points in the freight network. Inland river and Great Lakes ports and deep-draft ports on the Atlantic, Pacific, and Gulf Coasts are especially critical with respect to their ability to efficiently transfer cargo shipped in intermodal combinations of rail carriers, trucks, barge lines, lake carriers, and dry-bulk ocean vessels.

Inland ports now handle approximately 190 million tons of coal annually, with river ports utilized in transporting about 155 million tons in intermodal rail-barge, truck-barge, and conveyor system-barge operations, and Great lakes ports handling about 35 million tons in rail-lake carrier and rail-ocean carrier shipments to domestic utilities, Canada, and overseas points. Of the total annual river port coal traffic, approximately 85 percent is carried to domestic consumers and 15 percent to Gulf Coast ports for export to overseas coal markets. Annually in 1992 the U.S. supplied slightly more than 100 million tons of coal to other countries, and NCA forecasts our export coal trade to be about the same in 1993, or about 10 percent of our annual coal production in the U.S. Those coal exports contribute approximately \$4.5 billion to the positive side of the U.S. trade balance annually.

Realizing that river and Great lakes ports are heavily involved in intermodal transfers of coal for domestic consumption and for exports in world coal trade, and that deep-draft ports on our three coasts are vital transshipment facilities for the movement of U.S. coal in coastal and overseas coal shipments, NCA is a strong advocate of the Congress in its intent to promote intermodal transportation under provisions of Title V. We are particularly focused on how the National Commission on Intermodal Transportation will be addressing that subject in its report to the Congress due on

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September 30, 1993 from the perspective of facilitating surface transportation connectivity among the transport modes and access to ports and terminals with respect to bulk freight. We have noted further that, under Title V, the Secretary of Transportation is authorized to make available grants to states to develop model intermodal transportation plans. In that regard, again NCA seeks the inclusion of considerations related to the movement of bulk commodities, especially coal, in the model plans.

In conclusion, Mr.Chairman and members of the subcommittee, the coal industry, consumers of electricity generated by coal-fired utility plants, other energy-intensive industries, and the nation's trade balance to which coal makes substantial contributions, together with bulk-freight carriers that transport coal, are all stakeholders in the implementation of ISTEAs. We warmly appreciate the opportunity to appear as you examine this matter.

Testimony Of
AMERICAN ROAD & TRANSPORTATION
BUILDERS ASSOCIATION

Presented By

James Madara
Chairman

Before

Subcommittee on Surface Transportation
U.S. House of Representatives
Washington, D.C.

April 21, 1993

Good morning, Mr. Chairman, Mr. Petri, members of the subcommittee.

I am James R. Madara, 1993 chairman of the American Road and Transportation Builders Association (ARTBA). My present professional position is Senior Vice President of Gannett Fleming, Inc. which is involved in the planning and design of highway, bridge and transit projects throughout the world. I am a registered professional engineer with over 40 years experience in highway and transit design. It is a pleasure to join you today for this very important review of the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEA (ice tea).

It is ARTBA's fundamental belief that an efficient, coordinated, well constructed and well managed transportation network is essential to both the economic and social well-being of the United States.

Today, our country lies at a crossroads in many respects, including the future development of our means of mobility. The decisions we make now will influence the course of events well into the 21st century. For that reason, these hearings are vital to charting the correct course for the investment of scarce financial resources to assure that America will not be hampered by inadequate means of mobility as it seeks to compete in an increasingly competitive and diverse world.

For these reasons, I commend you for calling these hearings. The new surface transportation act has been in effect for only 16 months, and many of its provisions have not yet been fully implemented. It is not too soon, however, to begin evaluating how this legislation is carrying out the objectives of those of you who developed its provisions. Because ISTEA represents a substantial break with the past, and because it will govern surface transportation investments for at least the rest of this century, its initial implementation will to a large degree determine its success.

Mr. Chairman, ARTBA last year observed its 90th year as the only national association representing the full range of transportation development interests. Our membership of 4,000 firms and individuals includes contractors, engineers, public officials, educators, suppliers of materials, equipment manufacturers and financial institutions. They are involved in the planning, financing, construction and operation of highways, bridges, airports, transit systems, waterways, ports and railroads.

The basic tenet of our organization is the conviction that America will never have the transportation system it needs unless we are willing to commit ourselves to providing financial resources adequate to its construction, maintenance and operation.

With that understanding, I would like today to review some of the issues that need to be addressed in this watershed period of our development. The decisions that are made in the immediate future will go a long way toward determining the shape and focus of our transportation program.

It is not by coincidence that I choose first to discuss the National Highway System. If there is anything in the 1991 surface transportation act that has enormous potential for our nation, it is the NHS. It is essential, therefore, that the Congress, the administration and all of us in the private sector continue to focus our energies on making the promise of the National Highway System come true.

That promise is nothing less than a highway network that will be the focal point for future federal highway and bridge capital investments. At approximately 155,000 miles, the NHS will comprise only four percent of the nation's existing highway mileage. But it is the mileage that carries 40 percent of total vehicle-miles traveled, including 80 percent of all tourist travel and 75 percent of all heavy truck travel.

Significantly, when designated, the NHS will reflect major demographic and travel changes that have occurred in this country since the establishment of the Interstate System 37 years ago.

There are two immediate issues with respect to the NHS that invite the subcommittee's attention.

The first is the designation of the system itself. By April 30 of this year, the Secretary of Transportation is to receive proposals from the states on routes for inclusion in the NHS. Before December 18 of this year, the Secretary is directed by ISTEA to deliver his recommendations for the system to Congress. You will then have up to two years to take final action on the NHS "map."

ARTBA strongly urges that Congress give a high priority to designation of the NHS. As the future focus of the federal highway program, it must be carefully considered and assure that the final routes do indeed serve major population centers, ports, airports and international border crossings. The highway needs of the country are already so great that there should be no delay in implementing the attack on these deficiencies afforded by the creation of the National Highway System. Expediting the Congressional approval process will allow the states to move forward to improve the routes designated as part of the NHS.

Our second major concern is over financing for the National Highway System. Many roads in the new system will require extensive reconstruction to bring them up to the standards necessary to meet the traffic demands that will be imposed on them. In addition, safety improvements should also be included.

Beyond a safe roadway design must also be the signing and delineation that are an integral part of safety. The aging of the driving population is just one of many factors that demands greater safety-related investments.

All of these needs argue persuasively for a substantial level of funding for the NHS. While ISTEA raised highway funding to new records, it unfortunately is inadequate when compared with real needs.

The combined authorizations for the Interstate and NHS programs provided over the six years covered by ISTEA total about \$43 billion. Even if the act is fully funded, that is not enough to do the job that is needed. Funding should be increased by \$10 billion annually for this important system which would require a 10 cents-per-gallon increase in federal motor fuels taxes. The resulting revenues should be dedicated solely to the NHS, with no opportunity to transfer it to other uses as provided for most other activities under ISTEA.

ARTBA is not alone in recognizing the need for surface transportation investments above and beyond those provided by ISTEA.

Just last month, the Competitiveness Policy Council, which is an independent, bipartisan federal advisory committee that reports to the President and the Congress, issued a report that states: "Over and above ISTEA's authorized [annual] levels...

substantial additional investment, reaching \$12.5 billion, is needed well into the future to keep U.S. roads, bridges, and transit in good working order and to keep America moving, safely and reliably."

Specifically, the Council suggests that ISTEA should be supplemented annually by an additional:

- \$9 billion to support capacity enhancement and pavement repairs on the 155,000-mile "National Highway System";
- \$1 billion to accelerate the repair or replacement of structurally deficient bridges;
- \$1 billion to fund projects that create intermodal connectivity; and
- \$1.5 billion to upgrade and eliminate the backlog of deferred maintenance on the nation's public transit systems.

Another significant change made by the Intermodal Surface Transportation Efficiency Act is in the area of flexibility. Under the provisions of ISTEA, nearly 80 percent of the highway funds are subject to some form of flexibility or transferability. A large portion of these funds may be used for non-highway transportation alternative projects.

While transferability within the highway program can provide for effective use of authorized highway funding, the flexible approach of ISTEA can also lead to reduced highway investment while known needs continue to grow. The latest Conditions and Performance report transmitted to Congress in January of 1993 by the U. S. Department of Transportation shows annual highway spending needs of \$52 billion to maintain current conditions on roads and bridges eligible for federal assistance. This is \$16 billion more than current expenditures for capital activities by all levels of government which is \$36 billion annually according to the same DOT report.

Even though the early experience with flexibility has not seen overwhelming transfers to transit or other alternative projects, the potential for reducing the serviceability of our highway system still exists. Of the \$436 million in highway funds committed to transit, the large majority have been used for bus purchases.

Mr. Chairman, where will these buses run and will they truly reduce congestion if the highways on which they operate are not improved and/or maintained? This nation's highways must be adequately funded so that commerce and people can continue to move freely and expeditiously.

The experience with flexibility is limited to the first year of a very new program requirement and the transfers that have occurred could be only those that were already in the "pipeline."

After the planning process is fully implemented this fall, it will be easier to determine the impact of the new flexibility on meeting state and local transportation needs.

While ARTBA supports full funding of transit capital needs, it must not be at the expense of meeting highway needs. Based on 1993 DOT data, Americans prefer their automobiles. Highway travel accounts for over 94 percent of personal travel, including commuting. Transit ridership, on the other hand, has shown a decline of one percent in annual person-trips between 1983 and 1990 according to 1990 Census data.

As the planning process for urban areas mandated by ISTEA continues to develop, more pressure will be brought to bear for increased use of flexibility to better address local transportation needs. Local decision-makers may turn heavily to transit solutions to meet requirements of the Clean Air Act. This could impair the improvement of highways and bridges which improves traffic flow and contributes to reducing air pollution.

Mr. Chairman, this leads to a discussion of the planning process. While ARTBA supports a strong, unified planning process, we remain concerned that the new metropolitan planning requirements of ISTEA will not prove effective in the long run.

A significant burden is placed on metropolitan planning organizations (MPOs) to plan, program and administer transportation programs in the urbanized areas they serve. Many

of these MPOs do not currently have the staff or expertise to do the planning necessary to formulate the decisions as to which transportation solution best serves their area's needs. Some of the largest MPOs representing major cities may have the required expertise in general terms, but even they may require new staffing and a revamped approval process.

It already takes four to six years to scope, plan, develop and approve a transportation construction project where highway work is the chosen alternative. The planning process in ISTEA may delay the ultimate decision even further. The result may be failure to maintain existing transportation infrastructure, leading to a decreased ability to meet local and possibly regional and national transportation needs.

Mr. Chairman, a study of the impact of the revised planning requirements to determine their impact on the project development process would be helpful. ARTBA would recommend that GAO be asked to undertake such a study.

This new planning system with the attendant flexibility for urban areas is designed to provide more local input in the decision as to which transportation alternative best meets local needs. Transit has a major role in addressing urban mobility. Again, according to the DOT Conditions and Performance report, transit capital needs, including bus and rail assistance, are \$3.89 billion annually to maintain current conditions. This number increases to \$6.6 billion annually to reduce the backlog

of transit capital needs and increase transit's national market share by 25 percent over a 30 year period.

Current transit capital needs can be met by ISTEA authorizations which are set at \$5.2 billion per year through fiscal year 1997. If improving transit usage is the national goal, increased federal/local funding will be required. Greater federal expenditures would require increased general fund support of transit or possibly a tax increase.

Regardless of how transit capital needs are addressed, highway spending must also be increased. Flexibility alone is not the answer for either of these important transportation modes. ARTBA has aggressively supported increases in motor fuels taxes to meet needs as defined in recent Conditions and Performance reports. We also believe the public would support such increases if they are used solely for transportation purposes based on recent polling done by many polling organizations.

Mr. Chairman, the toll and public-private partnership provisions of ISTEA provide state and local governments new options in financing and developing needed highway, bridge and tunnel improvements. The Act breaks with the past by allowing states to blend toll and traditional motor fuels user fees providing a potentially significant source of alternative financing for these much-needed projects. The toll provisions of ISTEA also enable states and private parties to enter into cost-sharing agreements and new forms of facility ownership.

Although the toll and public-private partnership provisions of ISTEA represent a bold and forward thinking departure from the status quo, this subcommittee and the other members of the House recognized last year that something more was needed to be done to get this new phase of the nation's toll program off the ground. Specifically, the House last August overwhelmingly approved changes to the ISTEA toll and public-private venture provisions in the Technical Corrections bill. These changes, among other things, more fully opened the door for the financial participation of pension funds and other entities, clarified the meaning of reasonable rate of return and other key terms, and stated with greater specificity the environmental and other requirements of the optional loan program.

Mr. Chairman, these changes, which ARTBA and others wholeheartedly supported, are needed. Whether such changes standing alone will be enough to do the job is not known. We do know that these provisions are vitally important and in time may be regarded as one of the hallmarks of ISTEA.

Another new requirement of ISTEA is the spending of 10 percent of Surface Transportation Program (STP) authorizations for transportation enhancements. While all of the activities listed as transportation enhancements are laudable goals, ARTBA questions the use of highway funds for many of them unless they are directly related to the development of a particular highway project undertaken with STP funds.

We are particularly concerned when enhancement funds are used to purchase historic sites, scenic easements or carry out other such activities totally unrelated to a transportation project or for only aesthetic value when related to a specific transportation improvement project. With transportation funds inadequate to meet even current needs, these funds authorized for transportation improvements should not be used for projects that do not directly relate to the movement of people and/or commerce.

Before discussing the important issue of funding, I would like to mention the six management systems required by ISTEA. The development by FHWA of the guidelines for these systems is a positive step forward in improving the quality, durability and service level of our highway and other transportation systems. FHWA recently published the proposed guidelines in the Federal Register.

Particularly, the pavement and bridge management systems coupled with use of the Strategic Highway Research Program results will certainly help improve the durability of highways and bridges and extend their useful lives.

Mr. Chairman and members of the subcommittee, maybe the most pressing issue in the implementation of ISTEA is funding and the Highway Trust Fund resources necessary to achieve full funding. The \$155 billion authorized for highway, transit and safety programs in ISTEA was a positive step forward in meeting transportation improvement needs that had been outstripping

available resources at the federal, state and local level in recent years.

However, full funding of the authorizations has not occurred in fiscal years 1992 and 1993. In the current fiscal year, the obligation limitation is set nearly \$3 billion below the \$18.3 billion authorized in ISTEA. Currently, federal funds represent approximately 50 percent of all capital investment in roads, streets and bridges. With capital investment requirements for highways eligible for federal-aid at \$52 billion per year, as stated in the earlier referenced 1993 Conditions and Performance report, federal funding at the assumed 50 percent rate is \$8 billion annually below the level needed to meet current highway needs.

This shortfall can be made up by increasing the federal contribution to highway improvement spending. Obviously, a federal motor fuel tax increase would be required.

The first objective should be to fully fund ISTEA. ARTBA strongly supports the stimulus package proposed by President Clinton which includes \$2.97 billion to increase the obligation ceiling for highways to the authorized level of \$18.3 billion. Because the economic stimulus package was not enacted by the planned date of April 1, five states have canceled all or parts of their April and May lettings. This represents 104 projects with a value of \$240 million. Congress must enact the stimulus package quickly or the job creation effect for 1993 will be lost.

Further, we are also pleased that the President's budget for fiscal year 1994 contains full funding.

These are positive indications of the improved understanding of the importance of meeting transportation needs to the continued prosperity and future economic growth of this nation. Full funding cannot, however, be achieved without addressing the problem of lower Highway Trust Fund revenue than projected for development of ISTEA funding levels.

Last year, the General Accounting Office (GAO) raised the issue of reduced revenue and the resulting implementation of the Byrd Amendment provision in the Highway Revenue Act to reduce highway authorizations accordingly. The GAO estimate was for a \$6 billion shortfall with authorizations reduced late in fiscal 1995 and continuing in 1996 and 1997.

However, at a recent hearing of the Senate Transportation Appropriations Subcommittee, GAO testified, that according to FHWA projections of revenue in January of 1993, the shortfall is now projected to be \$12.5 billion. This will result in a reduction of obligations of \$4 billion per fiscal year beginning in fiscal year 1995.

The solution is simple. As we have previously testified, transfer the 2.5 cents-per-gallon motor fuel tax currently going to deficit reduction to the Highway Trust Fund. Yes, as the GAO stated at the recent Senate Appropriations hearing, the entire

2.5 cents must be used for highway account activity if the authorization levels of ISTEA for highway projects are to be maintained in fiscal years 1995, 1996 and 1997. ARTBA strongly recommends this course of action.

Mr. Chairman, full funding is essential to making a concerted effort to meet highway and transit needs that are continually growing. We urge you and the members of the Committee on Public Works and Transportation to work with the Ways and Means Committee to resolve this critical funding issue of the revenue shortfall.

I thank the subcommittee for this opportunity to testify on the implementation of the Intermodal Surface Transportation Efficiency Act and stand ready to respond to any questions that you may have.



American Association of
State Highway and
Transportation Officials

Wayne Muri, President
Chief Engineer
Missouri Highway
and Transportation
Department

Francis B. Francois
Executive Director

STATEMENT BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Relating to

IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT
(PL 102-240)

By

WAYNE MURI

President, American Association of State
Highway and Transportation Officials
and
Chief Engineer and Chief Administrative Officer
Missouri Highway and Transportation Department

April 21, 1993

Founded in 1914, AASHTO represents the departments concerned with transportation and highways in the fifty states, the District of Columbia and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member transportation and highway agencies.

Executive Office: 444 N. Capitol St., N.W., Suite 249, Washington D.C. 20001
Telephone (202) 624-5800 Telefax (202) 624-5806 Telex 4900009580 HTO



Mr. Chairman, my name is Wayne Muri. I am the Chief Engineer and Chief Administrative Officer of the Missouri Highway and Transportation Department, and President of the American Association of State Highway and Transportation Officials (AASHTO). On behalf of AASHTO, I am pleased to accept your invitation to testify on the implementation thus far of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

In my testimony today I will provide an overview of the implementation of the ISTEA, as viewed nationwide by AASHTO. To supplement our AASHTO testimony and provide you with specific observations on the implementation of the bill from different state perspectives, I am accompanied here today by top officials from two other state highway and transportation departments. They are: Howard Yerusalim, Secretary of Transportation in Pennsylvania and Vice President of AASHTO; and Thomas Barry, Assistant Secretary for Finance and Administration of the Florida Department of Transportation. Florida has been very active in developing an intermodal program responsive to what we believe was envisioned by the ISTEA, and we have asked Assistant Secretary Barry to especially comment on this activity in his testimony.

Mr. Chairman, for the record I would note that this testimony was prepared the week of April 12 and filed with your Subcommittee. The AASHTO Board of Directors was then scheduled to meet on April 19 and 20, at which time it will consider several policy matters that relate to the ISTEA. It is the intent of AASHTO that we will prepare a supplement to this statement for the Subcommittee, reporting on the results of the April 19-20 meeting.

With these preliminary matters completed, let me now turn to the ISTEA.

Mr. Chairman, AASHTO recognizes that ISTEA is important, once in a generation transportation legislation. It authorizes vitally needed federal funding for surface transportation. The Act also restructures the traditional surface transportation programs, and endeavors to increase flexibility for the states and our local governments to better utilize the authorized funding. In an effort to assure better transportation decisions, the Act moves most decision making to the state and regional level and makes several changes to the state and regional planning process. Recognizing that the highway system provides critical support for the nation's economy and the life style of Americans, the Act calls for establishment of a new National Highway System. It also promises increased support for research and planning, creates a new transit research program, and gives strong support to the development and deployment of Intelligent Vehicle/Highway System (IVHS) technology. These and other provisions of the ISTEA make it truly landmark legislation, intended to help America to better meet both our mobility and environmental challenges as we near the 21st Century.

The implementation of the Act is a large undertaking, one that will take several years to truly accomplish. We are now just 16 months into this implementation and much work still lies ahead. Included in that work are the problems that will be associated with weaving together the provisions of the Clean Air Act Amendments of 1990 (the CAAA) and the ISTEA, a process that still awaits the publication by EPA of a conformity rule. In my comments, Mr. Chairman, I want to report on the implementation of the ISTEA to date, and

then discuss some of the challenges that lie ahead.

I - AASHTO's Approach to ISTEA Implementation

Briefings

AASHTO and its member departments recognized while the ISTEA was moving toward enactment that it would dramatically change our federal-aid surface transportation programs, and made plans to begin its implementation. We organized and held our first ISTEA briefing in Dallas, Texas on December 17-18, 1991, which was attended by the top leadership of our member departments. As you know, President Bush chose to sign the ISTEA at a nearby construction site during AASHTO's first ISTEA briefing.

At that initial ISTEA briefing representatives of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) were invited to address all aspects of the new legislation. In addition to AASHTO's members, we invited a number of representatives of public and private sector organizations to attend, in recognition of the new partnerships envisioned by the Act.

A second ISTEA briefing was conducted by AASHTO on February 8-9, 1992 in Washington, D.C., in conjunction with a meeting of the AASHTO Board of Directors, which is comprised of me and my counterparts in all the states, the District of Columbia and Puerto Rico. Again we invited FHWA and FTA representatives, staff from Congressional committees, and representatives from other organizations involved in the new partnerships created under the ISTEA. In preparation for this meeting the states submitted more than 200 questions on the new legislation, to which the FHWA and FTA representatives provided written responses. Panel discussions were conducted on the topics of:

- o MPOs, and Overall ISTEA Planning Requirements;
- o Functional Reclassification and Designation of the National Highway System;
- o Program Administration and Efficiencies / State Standards;
- o Tolls and Privatization Provisions; and
- o The ISTEA, Intermodalism and the States.

Further updates on the ISTEA implementation were provided to the AASHTO Board of Directors at its summer meeting in Charleston, S.C. on July 26-28, 1992, and at our 1992 Annual Meeting last October in Rapid City, South Dakota. The ISTEA is again on our Board of Directors agenda for our April 19-20 meeting, and I believe will continue to be for some time to come.

In addition to these formal briefings, AASHTO has continued to serve as a clearinghouse to share information from the federal agencies, the states and other organizations on ISTEA implementation, including the Transportation

Research Board, the Surface Transportation Policy Project (STPP), the American Public Transit Association (APTA) and the National Association of Regional Councils (NARC). Recently, we have taken the leadership to reconvene the 12 organizations of the Transportation Alternatives Group (TAG) that worked to develop recommendations for the ISTEA legislative process, this time to review implementation of the ISTEA and the CAAA. Our AASHTO JOURNAL and other mailings containing information and updates about ISTEA have been sent to all of our member departments and some members of Congress, and also to many others in both the public and private sectors.

On-Going AASHTO ISTEA Implementation Activities

Within AASHTO several of our committees are working on ISTEA implementation. For example, our Standing Committee on Planning (SCOP) has been the focus of many of the issues generated by the Act. Task forces within this Committee have been developing and exchanging information among our AASHTO member departments on ISTEA implementation activities, and in 1992 the Association established a new newsletter to report on planning activities and developments. Recently, SCOP has been concentrating on the FHWA's Notices of Proposed Rulemaking for the new metropolitan and state planning processes and the six management systems mandated by the ISTEA, and these NPRMs are on the agenda for our April 19-20 Board of Directors meeting. Our Standing Committees on Highways, Highway Traffic Safety and Public Transportation are also working on these proposed NPRMs.

Our Standing Committee on Public Transportation has been working with the FTA since passage of the Act to implement the state transit provisions in the ISTEA. On August 9-11, 1992 AASHTO and the FTA held our second co-sponsored workshop for state transit officials. Nearly 200 attended, including 102 state transit officials representing 48 of our member departments.

In summary, Mr. Chairman, all across AASHTO and our 52 member departments we are working to turn the ISTEA into reality.

II - Putting ISTEA to Work

For America's surface transportation users - and that includes all of us - the ultimate measure of ISTEA implementation is, "Is the funding being employed to improve our nation's mobility?" The answer to this question is "yes," at least for our state highway and transportation agencies. It has not been easy to achieve this, however, given the number of fundamental changes the Act makes in the structure and administration of the federal-aid surface transportation programs. In response to those fundamental changes the states have essentially had to re-invent our agencies, at the same time as we have been working to get projects underway and realize the job-creation promised by the ISTEA.

Despite operating in a drastically altered landscape, the state departments of highways and transportation succeeded in obligating all the highway funds provided under the ISTEA in FY 1992. The 16 months since the

enactment of the ISTEA have seen many other implementing actions, including:

- o Between October 1, 1992 and March 30, 1993, some \$216 million in highway funds have been transferred from one highway category to another, taking advantage of the ISTEA flexibility provisions.
- o From December, 1991 through February 28, 1993, 23 states have obligated some \$436 million for transit use under the new flexibility provisions, including \$54.6 million from the Surface Transportation Program (STP), \$277 million from the Congestion Mitigation/Air Quality (CMAQ) program, and \$436 million from other programs. The first transfer of highway funds to transit occurred in Nebraska, for a bus purchase.
- o The new research funding is being put to work. Last September, our Standing Committee on Research was able to program some \$16 million in research projects for the next year, up from a level of about \$10 million pre-ISTEA, and the SHRP implementation funding provided in the ISTEA is allowing the FHWA and the states to move ahead with implementation of the some 130 products of the 5-year SHRP research effort.
- o IVHS projects are moving ahead in several states, including California, Michigan, and the Canada to Florida I-75 project, and the I-95 corridor on the east coast. AASHTO, which helped found IVHS AMERICA, is working within that organization to further IVHS efforts, and the FHWA has committed itself at the request of IVHS AMERICA to a critically needed program to develop an architecture for IVHS technologies.
- o Implementation of the transportation enhancement provisions of the ISTEA is underway in all states, slower in some than others because of the need to establish a process for handling this new responsibility.
- o States are working to implement the new management systems. Most already have Pavement Management Systems (FMSs) in place, and Bridge Management Systems (BMSs) are being generated across the nation. The balance of the systems are being analyzed and developed by our member departments.
- o States are initiating changes to their transportation planning systems, to align them with the new requirements of the ISTEA.
- o Metropolitan Planning Organizations (MPOs) are reviewing their organizations to meet the ISTEA responsibilities imposed on them, and are initiating needed staff expansion and training. AASHTO and its member departments are endeavoring to support the new state and MPO planning process, and progress is being made.
- o The states are completing the functional reclassification of their highways as mandated by the Act, and are now working with the FHWA

to produce a National Highway System map.

- o Highway users, transit advocates, environmentalists, commercial leaders, private sector transportation producers and others have taken action to participate in the decision-making processes at the MPO (regional) and state levels, exercising the new roles given them under the ISTEA.

Overall, Mr. Chairman, we have made great progress in implementation of the ISTEA. But there is still much more to do and there are some problem areas that concern us.

III - ISTEA Challenges Ahead

Full Funding

Mr. Chairman, of all the challenges ahead to implement the ISTEA as intended by Congress, no challenge is more important than full funding of the Act.

The authorized levels of the ISTEA, \$120.9 billion for Title I (highways), \$1.63 billion for Title II (safety), \$31.5 billion for Title III (transit), \$.54 billion for Title IV (motor carrier safety), and \$.84 billion for Title VI (research), promise vitally needed support to America's transportation system. But to fulfill that promise, full funding of these authorized levels is necessary. Unfortunately, such full funding did not occur for FY 1992, and thus far has not occurred for FY 1993.

Under the ISTEA, for FY 1993 highway funding was to rise to \$20.478 billion, and transit funding to \$5.235 billion. Mr. Chairman, as you and the members of the Subcommittee well know, the appropriated levels for FY 1993 fell considerably short of that amount. Federal-aid to highways was set at approximately \$18 billion, with transit funding set at only \$3.8 billion. Actual 1993 funding thus fell some \$2.3 billion below the authorizations for highways and some \$1.4 billion below for transit.

We are encouraged that the new Administration is seeking to supplement FY 1993 transportation funding through the emergency supplemental appropriations bill. The \$2.97 billion in additional obligation authority for the highway program contained in the President's bill would in effect fully fund the program for FY 1993, and the \$712 million for transit would restore over half of the FY 1993 underfunding for this mode. AASHTO strongly supports approval of this additional funding.

The failure to fully fund the authorizations of the ISTEA, for both highway and transit programs, has seriously affected the ability of states, local governments and transit agencies to meet their transportation needs. Anticipating full funding, many of them proceeded to establish their programs on this basis and have since had to make adjustments.

While the new funding promised by the ISTEA is very important, it needs to be remembered that even with this funding highway and transit needs of our nation will not be fully met. This is made clear by the January, 1993 report

to Congress by the U.S. Department of Transportation, titled The Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance.

With respect to transit, the 1993 Status report states that the total transit expenditure for 1990 in our nation was \$19 billion, with \$14.7 billion for transit service and capital expenditures of \$4.3 billion. Turning to needs, the U.S. DOT report finds that over the period 1992-2011 the annual capital investment in transit from all sources should be at least \$3.9 billion to maintain conditions and performance at current levels, and \$6.6 billion to improve conditions and performance. Both capital expenditure levels include metropolitan expansions, and are stated in 1991 dollars with no allowance for inflation. As to what the \$6.6 billion level would accomplish, the report states that it would:

"(1) eliminate the backlog of bus and rail deficiencies; (2) maintain current transit market share; (3) add additional service to accommodate anticipated urban demand not included in the highway analysis; (4) improve transit stations to current standards; and (5) meet statutory requirements to serve disabled Americans."

Turning to highways and bridges, the 1993 Status report states that the total expenditure on highways by all level of governments in 1991 was \$81.2 billion, with \$36.1 billion of this being spent for highway and bridge capital improvements. The federal share of this \$36.1 billion was 41 percent in 1991, compared to 44 percent in 1989. Remembering that in 1991 the total capital spending on our highways and bridges was \$36.1 billion, the 1993 Status report finds that \$51.6 billion should be expended annually to just maintain conditions and performance, and that if conditions and performance are to be improved to acceptable levels the annual capital funding should be \$67.3 billion.

As the 1993 Status report make clear, even at full funding the ISTEA falls short of meeting the traditional federal role toward funding the capital needs of transit, highways and bridges. But full funding of the ISTEA is important and will certainly help keep America mobile. Full funding is strongly supported by AASHTO, as shown by the attached copy of an AASHTO resolution adopted last October.

Looking to future years, the budget recently sent to the Congress by the President contains full funding of the highway portion of the ISTEA in FY 1994 and later years, and increases transit funding. It also proposes to extend and place in the Highway Trust Fund the 2.5 cent motor fuel tax enacted for deficit reduction in 1990, with part of the revenue being devoted to public transportation, effective in FY 1996. Preserving the use of transportation user fees for transportation purposes has long been a policy of AASHTO. We believe that the return of the motor fuel tax to the Highway Trust Fund is critical if the Congress is to fully fund the transportation investments provided for in ISTEA.

I mentioned that when the ISTEA is underfunded as was done in FY 1993, it disrupts orderly fiscal and program planning. Other problems are also created. Among these are that intense competition can be created between the highway and transit modes, to claim available funding for their respective

modes. In addition, because of the many hold harmless provisions and other features of the ISTEA distribution formulas, when underfunding occurs the distribution intended by the Congress is disrupted, creating relative winners and losers among the states. All of these problems can be avoided with full funding.

In early December of last year, AASHTO issued A Report on the Highway Program Capacity of State Highway and Transportation Departments, FFY 1993-1996. Based on a survey of the 50 states, the District of Columbia and Puerto Rico, the report provided information on the states' ability to fully utilize the \$18 billion in federal-aid for highways provided under the Department of Transportation Appropriations Act (PL 102-88), and their ability to use full funding of the Act and additional highway funding if it should be made available.

I would like to share with you some of the comments we received from the states in this AASHTO survey, reflecting the states' concerns over the failure to fully fund the ISTEA:

"Congressional appropriation of less federal money than ISTEA authorized has substantially altered our approach to FY 1993."

"The reduction of obligation limits below authorization levels in FFY 1992 has disrupted the accomplishment of our published construction programs, causing delays in both state and local infrastructure developments."

"The reduction in obligation authority from the amount authorized in ISTEA has severely hampered our FFY 1993 program."

Mr. Chairman and members of the Subcommittee, we strongly urge full funding of the ISTEA.

The National Highway System

Mr. Chairman, along with this Subcommittee, AASHTO gave strong support to the inclusion of the National Highway System in the ISTEA. We believe that the NHS is important, and that it provides a needed focus to our nation's national highway program.

Our AASHTO member departments are now working with the FHWA to prepare a map of the proposed NHS, which will be submitted to the Congress later this year. The NHS is a necessary supportive component of our overall intermodal transportation system, and is required to help us meet America's mobility needs for both people and goods. We urge, Mr. Chairman, that once the NHS system proposal is presented to you, Congress proceed with dispatch to enact NHS legislation well before the end of this two year period, so that we can bring stability and direction to our national highway program at the earliest possible time.

The ISTEA and the CAAA

Mr. Chairman, we recognize that Congress deliberately linked the

provisions of the 1990 Clean Air Act Amendments (CAAA) with the provisions of the ISTEA, and that especially in the planning area, the provisions of the CAAA and the ISTEA must work in concert. AASHTO has been working toward that end, but frankly we are concerned about the kind of decisions that may result, based on the interpretations being placed on the CAAA by some of its advocates.

Since passage of the ISTEA, AASHTO has worked hard to bring about the joint implementation of the ISTEA and the CAAA. For example, we are providing to the committee two sets of some documents that the Association produced in 1992, which we believe will be of use to you. Included are the following:

- o A briefing paper titled Background Information on the ISTEA Planning Requirements, prepared by the AASHTO staff and which describes key provisions of the ISTEA, some of the actions then being taken by our member departments, and some conclusions based on observations by our staff.
- o A set of two new newsletters recently initiated by AASHTO. One is titled the AASHTO Environmental Bulletin, and is published under the sponsorship of our recently created Standing Committee on the Environment. The other is titled the AASHTO Planning Bulletin, and I mentioned earlier and which is sponsored by our Standing Committee on Planning. Both are published periodically to convey new information with regard to environmental and planning issues, respectively, and are widely circulated and utilized. The copies being provided to you give a great deal of detailed information regarding ISTEA implementation activity.
- o A set of four publications commissioned by AASHTO to help in the implementation of the 1990 Clean Air Act amendments and the related provisions of the ISTEA, titled A User-Friendly Guide to the Transportation Provisions of the 1990 Clean Air Act Amendments, 1990 Clean Air Act Amendments Transportation Provisions Questions and Answers, Action Guide for the 1990 Clean Air Act Transportation Provisions, and CAA Excerpts - Transportation Provisions. These publications have been widely circulated, both within AASHTO and to MPOs and others.

Early this year the EPA promulgated a Notice of Proposed Rule making intended to establish the conformity rules needed to implement the CAAA in the transportation area, to which docket AASHTO responded. Other responses to the docket contend that the EPA NPRM does not meet the mandates of the CAAA, and urge interpretations of the CAAA that could unnecessarily cripple transportation in at least the non-attainment areas of the nation. Mr. Chairman, we urge that the Subcommittee monitor this developing situation.

Intermodalism

A purpose of the ISTEA was to increase intermodal activity, and AASHTO and its member departments have been working to implement these provisions of the Act. Again, our Standing Committee on Planning is focusing on this area, as is our National Conference of State Railway Officials (NCSRO) and other

member departments. A number of intermodal projects are being advanced in the states. With respect to intermodal planning, the Florida Department of Transportation has shown considerable leadership in this area. As I stated earlier, we have asked Assistant Secretary Barry to especially describe their intermodal activities to the Subcommittee, as part of our AASHTO panel.

MPO Role

Mr. Chairman, the states and the Metropolitan Planning Organizations (MPOs) are both working to make the new metropolitan planning portions of the Act function as intended. The Act calls for an intensity of activity that will be difficult to accomplish in the short term in some areas of the nation, and perhaps over the long term as well. One concern we have is the ability of some of the MPOs to make timely decisions under the stricter guidelines of the ISTEA. Our Standing Committee on Planning is working to facilitate an effective state DOT/MPO relationship. In 1992, for example, SCOP conducted a survey of the planning situation as regards states, MPOs and transit agencies, and published a report for all to utilize. A copy of that report is being filed with my testimony. An update on this survey is now underway, and AASHTO is working with NARC to help solve specific issues.

It is too early to determine if the MPO provisions of the ISTEA will in fact work as intended, in all parts of the nation. Accordingly, Mr. Chairman, the Subcommittee should continue to maintain oversight on this subject, as AASHTO also will.

Management Systems

The six management systems included in the ISTEA can be a helpful supplement to the other decision and programming tools available to our member departments, and should be viewed in this context. As noted earlier, the FHWA has now published a Notice of Proposed Rulemaking on these management systems, which AASHTO and our member departments are in the process of reviewing. This subject is also on the agenda for the April 19-20 meeting of our Board of Directors. Among the concerns we have is that implementation of the management systems should recognize the PMS, BMS and other systems now in place in the states, and not require new systems. We are also concerned that the management systems not become an exercise in collecting data for data's sake, and trust that the Subcommittee is in agreement with AASHTO on this position.

Planning Provisions

The ISTEA makes many changes in the state, regional and local surface transportation planning processes. Again, the FHWA has now produced Notices of Proposed Rulemaking in this area, and AASHTO and its member departments are reviewing these NPRMs, as indicated earlier. Like with the management systems, one concern we have is that the amount of data called for under the planning provisions and the NPRMs be rational and manageable.

Summary

Mr. Chairman, in this testimony I have given a broad over-view of the

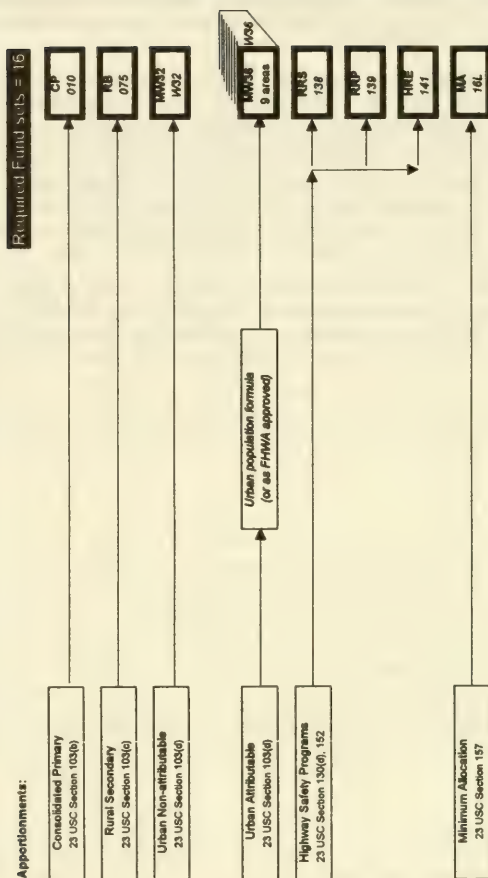
very aggressive actions being taken by AASHTO and its member departments to implement the ISTEA. The reality is, to quote a popular song of a few years ago, "we've only just begun." There are many challenges, and years of work, ahead before this landmark, once-in-a-generation surface transportation act can be truly considered implemented.

On behalf of AASHTO, Mr. Chairman, I want to commend the leadership of U.S. DOT, and in particular the leadership of the Federal Highway Administration and the Federal Transit Administration, for their aggressive and fair efforts to help us implement the ISTEA. We had their full cooperation in conducting our ISTEA briefings, and they have never failed to respond to the many questions posed by our 52 member departments over the past year. While we may not always agree, both the FHWA and FTA have extended to us a high degree of cooperation, and as a result the federal-state partnership in our surface transportation programs is stronger than ever.

In closing, Mr. Chairman, and before turning to the other members of our AASHTO panel, I want to again express the appreciation of AASHTO and our member departments for the invitation to provide testimony at this hearing. We stand prepared to respond to any questions you may have, either today, or in writing later.

#

Previous 1987 Transportation Act
STURAA DISTRIBUTION LOGIC DIAGRAM
Previous distribution of funds which were folded into the Surface Transportation Program

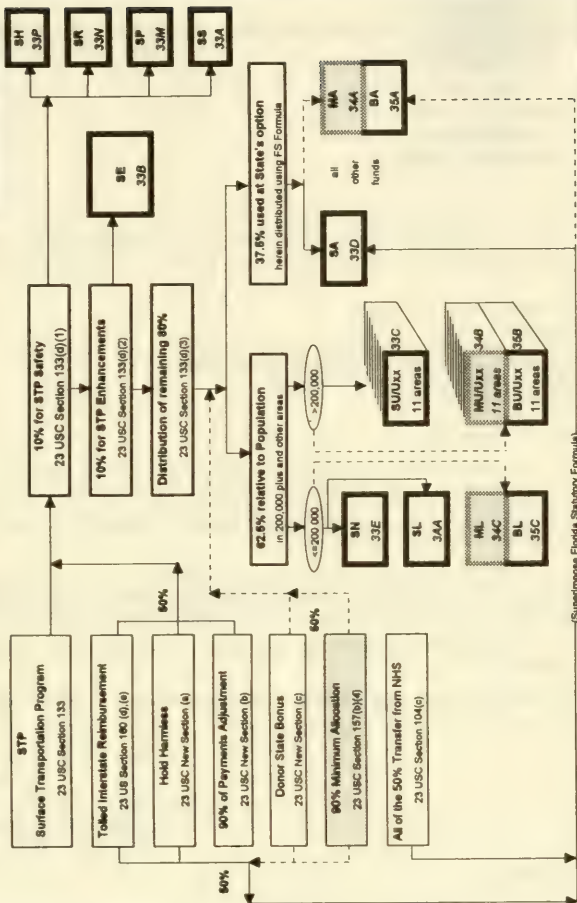


(FHWA fund codes shown in *italics*)*

includes required use of STP population relationship provision (132(d)(3)) for 50% of the 90% MSA distribution

Required Fund sets = 55

Apportionments:



STPLQDQC.XLS

* Source of fund codes: FHWA - HFS-22, Dec 18, 1991. Individual 100% Safety FHWA codes are not shown, but are associated with each fund box shown



American Association of
State Highway and
Transportation Officials

Wayne Muri, President
Chief Engineer
Missouri Highway
and Transportation
Department

Francis B. Francois
Executive Director

May 14, 1993

Honorable Nick Joe Rahall II
Chairman
Surface Transportation Subcommittee of the
House Public Works and Transportation Committee
2167 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your question regarding our statement before your Subcommittee on April 21, 1993, relating to the implementation of the Intermodal Surface Transportation Efficiency Act. On page 5 of our printed statement, you questioned the amount stated for ISTEA funds that have been obligated for transit projects.

Under "other programs" we indicated \$436 million. That figure should have been \$104.4 million. The discrepancy was made in drafting the final statement for your committee. The \$436 million is the total sum transferred.

I am attaching a table and some text that contains the correct information.

We appreciate your calling this to our attention. We apologize for the typo.

Very truly yours,

Francis B. Francois
Executive Director

FBF:BKH:mlm

According to the Federal Highway Administration, as of February 28, 1993 the following amounts of ISTEA funds have been obligated for transit projects in 23 states:

Surface Transportation Program	\$54.6 million
Congestion Mitigation/Air Quality	\$277.0 million
Other programs	\$104.4 million
Total	<u>\$436.0 million</u>

The "Other" category of funding includes Interstate Highway Substitution Funds being used for other purposes, Minimum Allocation Urbanized funds, and Priority Intermodal Projects. Attached is a table from the FHWA indicating a state-by-state use of funds for transit projects.

THE AMERICAN INSTITUTE OF ARCHITECTS



STATEMENT OF
ROBERT A. PECK
on behalf of
THE AMERICAN INSTITUTE OF ARCHITECTS

before the
SUBCOMMITTEE ON SURFACE TRANSPORTATION
of the
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

April 20, 1993

1735 New York Avenue, N.W.
Washington, D.C. 20006-5292
Telephone 202 626 7300

Mr. Chairman, and members of the Subcommittee, my name is Robert A. Peck. I am Group Vice President for External Affairs for the American Institute of Architects, a former staff member of the U.S. Senate Committee on Environment and Public Works, and a member of the Commission of Fine Arts. Accompanying me today is Al Eisenberg, AIA Senior Director for Federal Legislative Affairs. Al is also a member of the Arlington, Virginia, Board of Supervisors, in which capacity he serves on several metro area land use and transportation panels.

With 54,000 members, the AIA is the professional association representing the nation's architects. This year, the AIA celebrates its 136th anniversary.

Since the two and a half years since its inception, the AIA has served in the leadership of the Surface Transportation Policy Project (STPP). We convened STPP's Livable Communities Coalition of design, preservation, and environmental groups primarily concerned with ISTEA's provisions on transportation planning and programming, the transportation enhancements, and increased public participation in transportation decision making. We worked closely with many members of this subcommittee on ISTEA.

The AIA believes that if implemented faithfully this new transportation law will prove to be one of the Congress' most significant contributions to more livable, better functioning communities, a cleaner, more attractively designed environment, and the more efficient use of the public's tax dollars. We commend you, Mr. Chairman, for your leadership in holding this series of oversight hearings to assess the law's strengths and weaknesses eighteen months after its enactment. We look forward to working with you and the Subcommittee on Surface Transportation to ensure that this new law fulfills its great promise.

THE ARCHITECT AND ISTEA

Architects have the ability to see the whole from its many parts. They are accustomed to fitting together complex pieces of a design puzzle in a combination of both form and function. They see the potential for transportation to serve many interests at once, creating better communities while getting people and their belongings where they need to go.

One of America's foremost 19th century architects is known for having said, "Make no small plans. They have no power to stir men's blood."

ISTEA would have us make no piecemeal plans for they have no power to serve the places we live and work. The AIA believes that ISTEA offers extraordinary opportunities for improving the quality of life in the nation's communities large and small because of its power to bind more together than just places or road and rail networks. In fact, in many ways ISTEA constitutes the closest approximation to a national urban policy that exists today. For once, transportation policymakers are expected to look at transportation as a servant rather than a determinant of broad community interests. The way transportation serves the social, economic, and environmental concerns and objectives of a city or a region have become paramount concerns. Issues of urban design, clean air, sensible growth patterns, community planning with meaningful citizen involvement, system performance rather than system building, and the movement of people and goods—not just vehicles—have all come together in ISTEA.

The old notion of transportation as a wish list of projects aimed at solving a problem defined as traffic has been replaced with the idea that transportation is about the future of our communities and neighborhoods. AIA's members see this potential in ISTEA, and are eager to contribute their vision and their knowledge to its fulfillment.

As the subcommittee proceeds with its oversight of this new law, the AIA joins with STPP in presenting a number of issues for the subcommittee's attention.

TECHNICAL CORRECTIONS

If the law contains technical errors, then the subcommittee ought to correct them. Any technical corrections legislation, however, should not be used as an excuse to open up the act to substantive revision at this time. The law establishes a new paradigm for transportation planning and programming, and there are many who were very satisfied with the old "business-as-usual" approach, and would be happy to see the law step backward. This must be resisted.

The Congress acted wisely when it gave ISTEA a six-year life. It recognized that states and localities would need time to get used to the act—especially to revise their own laws to make them consistent with the act's requirements, to reshape their relationships with one another, and to adjust to a new way of thinking about transportation.

States and localities are working hard to do that, eagerly awaiting final regulations that will help them. Major substantive changes in the law at this time will only add confusion and slow progress toward the law's goals.

Should the subcommittee proceed with technical corrections legislation, it should hold separate hearings to secure views not just on issues but on the specific proposed legislative language that would determine how those issues are handled.

The AIA is working closely with Secretary Pena and Department of Transportation staff on the implementation of ISTEA. We have every hope that the final regulations will smooth the way for ISTEA's many partners to make the act function as intended. As these regulations are finalized there are several issues that should command the subcommittee's attention.

TRANSITION ISSUES

ISTEA provided little guidance about how localities and regions could move from their current planning process and product to the one envisioned by ISTEA. This problem has complicated the state and local planning process. Existing federal guidance, however, has not helped. It requires metropolitan areas to meet all the demands of the act by October 1, 1993, while states have no obligation to do so before 1995. This has created a mismatch between metropolitan planning and state planning and only adds to the confusion. While some would demand formal extension of the metropolitan planning deadline, we believe that the compliance deadline should be maintained and metropolitan planning agencies expected to meet this deadline to the fullest extent possible. States should not be allowed to wait until the ISTEA's authorization is almost over before they must apply the state act's requirements. The states' compliance date should be moved up from

1995 until 1994.

ISTEA's planning factors, fifteen for metropolitan areas and twenty for states, are key to the development of transportation systems and to the ranking of projects against one another. Neither the guidance nor the proposed regulations provides ample instructions on just how each factor should be applied. The Surface Transportation Policy Projects will submit views to the Secretary of Transportation in response to the draft regulations that we believe will help inform this process. We ask the subcommittee to pay particular attention to the requirements that the final regulations will establish for states and metropolitan areas to apply these planning factors.

One of the most vexing problems of transition involves the disposition of existing projects. Which ones should be allowed to come forward and which ones should be dropped? Some projects would fail to meet ISTEA's standards, but are possibly too far along in the process to halt. Others make valuable contributions to their communities. The requirement for fiscally constrained plans should force transportation policymakers to establish priorities for the limited funds. That exercise will eliminate some but not all of the worst projects that remain on the books.

The law does attempt to slow the construction of any new highway projects that add significant capacity for single occupant vehicles in metropolitan areas designated as "Transportation Management Areas", which are regions in air quality non-attainment with 200,000 people or more. These areas are prohibited from constructing such projects unless they are part of approved congestion management systems. We believe that the law's intent would permit projects affected by this provision to proceed only under very limited circumstances. For example, we might establish a rule that unless a facility has already acquired right of way, as well as completed its environmental impact statement, it should not be permitted to proceed in the absence of such a system.

TRANSPORTATION ENHANCEMENTS

Through the transportation enhancement program, ISTEA most forthrightly demonstrates its attempt to place transportation in context. The enhancements program demonstrates that no longer is transportation to be considered an isolated federal activity whose attention to the environment, to historic preservation, and to overall community livability is only to mitigate its own damage. Such activities as historic preservation generally and as part of historic transportation facilities, archeological studies, preservation abandoned rail corridors, and removal of billboards all speak to the law's integration of transportation into a larger setting.

In the technical corrections legislation proposed last year, there was a provision that added sound barriers to the list of eligible enhancement activities. We believe that this provision would violate the intent of the program by turning its purpose to mitigation rather than enhancement. It would also exalt a mitigation activity that is so expensive it would crowd out all the other eligible activities. Ironically, it would also diminish state attention to traffic noise problems because it would make the enhancement program the repository for noise mitigation funds rather than the much larger highway and transit construction programs where this concern properly belongs. Moreover, most sound barriers are anything but a visual enhancement.

When the program was developed in the Senate version of ISTEA, it was funded at eight percent of the flexible transportation programs and included safety projects among its eligible activities. The conference agreement increased the set-aside to ten percent and gave safety projects their own particular program. This action made clear the priority that the Congress placed on the activities now making up the program, and its determination not to have a major construction program overwhelm those activities. We urge the subcommittee to leave the program alone, and not to impose on the enhancement program another eligible activity that should be handled with its own dedicated funds or as part of the normal and routine construction program.

The subcommittee should explore carefully how the program is implemented. The program must fund only those projects that would not otherwise receive funding, not because of a lack of money from another source but because its projects possess a special ability to add a new and recognizable value to transportation projects' relationship to their community settings.

In some places, enhancement funds have been requested for historic preservation surveys and planning. These activities should be allowed only if they directly support specific enhancement projects. In other places, communities have sought to use enhancement funds for billboard removal. Such removals should be funded only if they constitute discrete projects that measurably and identifiably add to transportation's contribution to community livability. Otherwise, billboard removal should fall within the responsibility of states to take down illegal signs without compensation to the owner or to remove non-conforming billboards as part of their standard sign control authority.

THE NATIONAL HIGHWAY SYSTEM

The National Highway System (NHS) has been a source of confusion and controversy. The subcommittee should carefully monitor this program to ensure that the NHS map is fully integrated into the state and metropolitan planning processes and that it is part of a national intermodal and multimodal transportation system. It is important that the NHS designation of existing corridors make no prejudgment outside the planning process about the nature of future projects in those corridors.

The AIA is also concerned that states not exercise their authority to select NHS projects for funding to dictate to metropolitan localities in the choice of transportation modes in the NHS corridors. State transportation officials have told communities that if they wish to use NHS funds for a project other than what the state prefers, then the state would penalize those places by redirecting those funds to other places more in tune with the state's program. The AIA believes that such actions violate the cooperative process envisioned by the law and should not be permitted.

HIGHWAY TRUST FUND/MASS TRANSIT

We are gratified that the Administration has decided to send deficit reduction funds back to the Highway Trust Fund in a manner that respects the traditional split between highway and transit programs that now governs trust fund disbursements. Its action is an important reaffirmation of the balanced funding of the two modes.

When the 1990 budget agreement was adopted, an additional five cents-a-gallon gasoline tax was enacted. Half the receipts were devoted to deficit reduction, and half to transportation projects according to the traditional 80/20 division between highway programs and dedicated transit projects. When the budget agreement ends in 1995, the portion of trust fund revenues used for deficit reduction will be returned to the trust fund for use in transportation projects.

Beyond equity in transportation financing, there are some important practical reasons to maintain the balance between highway and transit accounts. Localities severely affected by growing populations, those with serious air pollution problems, and those that cannot serve their growth with roads alone depend upon dedicated mass transit funds to maintain the efficiency of their existing systems and develop extended or new facilities. Many will fall under Clean Air Act sanctions without adequate attention to mass transit. Others will be stymied in their efforts to strengthen their economies, get labor to job centers, redesign blighted areas or reduce traffic congestion in suburban neighborhoods. The continuation of the balanced funding of highways and mass transit is necessary for the social and economic future of some of our most important urban areas, as well as for many of our smaller communities for which expanded bus or rail service can mean important linkages to jobs and environmental quality. Our ability to move people through mass transit options should not be cut short.

The division of Highway Trust Fund receipts between transit and highway activities was seriously discussed by the new Administration. The issue will continue to be an important one, and we ask the subcommittee to maintain a strong commitment to transit programs within the trust fund.

Mr. Chairman, I am happy to answer any questions you may have. Thank you for your continuing concern for national transportation policy and its relationship to creating livable communities. Thank you also for inviting us to appear today.

STATEMENT OF
SUSAN PERRY
SENIOR VICE PRESIDENT -- GOVERNMENT RELATIONS
AMERICAN BUS ASSOCIATION

ON
IMPLEMENTATION OF THE INTERMODAL
SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

WEDNESDAY, APRIL 21, 1993
2167 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

American Bus Association
1015 15th Street, N.W.
Washington, DC 20005
(202) 842-1645

The American Bus Association (ABA) appreciates this opportunity to participate in the subcommittee's oversight hearing on implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). I am Susan Perry, Senior Vice President - Government Relations, of the Association.

ABA is the national trade association for the intercity bus industry. ABA has more than 500 bus operator members, all of whom are affected by the highway, safety, transit and intercity bus programs authorized by ISTEA.

All modes of surface transportation will benefit from the ISTEA highway programs designed to mitigate traffic congestion. Carriers and the general public will benefit from the highway safety program authorized by Title II. Other programs authorized by ISTEA must be refined or expanded to meet the critical needs of a fragile, but vitally important intercity bus industry.

Since our involvement and interest in ISTEA reach to more than Federal Highway Administration programs, I will be addressing today programs and issues that come under the auspices of offices within the Department of Transportation in addition to FHWA.

Demographic and Financial
Profile of the Intercity
Bus Industry

For purposes of background, a majority of bus passengers are from lower income families. Forty-six percent of bus passengers have annual household incomes of less than

\$15,000, as compared with only 24 percent for the general population.¹ Also, intercity bus companies transport a disproportionately large number of elderly people, young people, and people who reside in rural areas.

A 1992 GAO study found that the bus industry served 11,820 communities in 1982 but fewer than 6,000 in 1991.² The GAO study also found that the industry's financial performance worsened following deregulation in 1982. Both ridership and the industry's share of the intercity public transportation market have been cut in half. Nevertheless, the intercity bus industry is a valuable national asset and ought to be preserved. It provides an essential service for rural areas and for all areas it offers the most economical, energy efficient, and environmentally compatible service available.

We hope these hearings on the implementation of ISTEA will help lead to the restoration of a strong system of intercity bus transportation.

Improvement of Bus
Service in Rural Areas

This is one of the transit issues that we want to address today. ISTEA, at the initiation of this subcommittee, recognized the need to do something about the continuing decline of intercity bus service, particularly in rural areas of the country. A new subsection of the existing

¹Availability of Intercity Bus Service Continues to Decline, Report of the General Accounting Office to the Surface Transportation Subcommittee, Senate Committee on Commerce, Science, and Transportation (June, 1992).

²Ibid.

Section 18 (nonurbanized areas) program was created requiring each state to set aside a percentage of its funds to support intercity bus transportation in rural areas. This provision is Section 18(i).

In supporting Section 18(i), it was intended that the higher authorization levels of ISTEA would provide an opportunity to create and fund the new intercity bus program while holding harmless the existing Section 18 program. Indeed, the ISTEA-authorized funding levels would provide enough for both the new program and increases in the basic Section 18 funding, at least for now.

As we now know, the funds were not appropriated at the authorized levels. In FY '93, Section 18 funding actually dropped from about \$106 million to approximately \$91 million. The new Section 18(i) program had to be funded at ten percent of the appropriation, or about \$9 million. As a result, the existing Section 18 program was down to only \$82 million.

Understandably, some states were reluctant to spend their intercity bus money at the expense of their existing Section 18 programs. Since the statute says that a Governor may certify that there are no unmet intercity bus needs and a Federal Transit Administration guidance circular quoted conference committee report language that the Governor's assessment may be made "relative to other rural needs in the state," several states chose not to fund Section 18(i) in the first two years of ISTEA.

In spite of the funding problems, there are efforts to implement the 18(i) program. Several States, including Florida, Georgia, Kansas, Michigan, Nebraska, New York, North

Carolina, Ohio, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wisconsin, are making earnest attempts to determine their statewide intercity bus needs.

A number of ABA members have conferred with their States, and we remain hopeful that the program will flourish. Right now, it is too early to know for sure. President Clinton's FY '94 budget proposes more than \$130 million for Section 18; the intercity set aside would be 15 percent of that, or close to \$20 million. If funded at this level, we would be in a better position to know whether the program will work.

Research and Development

ABA and the industry are concerned about meeting the needs of those with disabilities, particularly those in wheelchairs. Current generation intercity buses are not designed to handle wheelchairs and will require a great deal of redesign to do so. Problem areas include a floor that is almost five feet from the ground, an aisle less than 15" wide, and an on-board restroom. Although we do not know what final regulations under the Americans with Disabilities Act will require, we do know that some assistance in developing either a new bus or technology compatible with the current models will be imperative.

We envision a private/public partnership for this effort and believe that ISTEA contains technology assistance funds that could be used for this purpose.

Hopefully, since this subcommittee has recognized the need to retain the viability of the intercity bus as a necessary public transportation mode, it would be willing to lend us support in this endeavor. Without some technology development assistance from the Federal

government, the survival of public intercity transportation, particularly in rural America, becomes even more threatened.

Construction of Intermodal Terminals

More than \$40 million in grants were authorized by ISTEA to build intermodal terminals. As we have testified on a number of occasions, this is not a subsidy program. It is, rather, a win-win situation for the builder, the companies who use them, and the traveling public. Bus companies, along with transit operators, Amtrak, and other surface transportation providers would defray the cost of terminal construction and operating expenses through the payment of user charges.

The greatest single deterrent to intercity bus travel is the condition of many existing terminals and the lack of terminals at all in many places. The chief impediment to correcting this is the carriers' inability to raise capital for terminal construction and renovation. Full funding of the intermodal terminal program would benefit passengers using all modes of public surface transportation. The program should be a centerpiece of the Federal government's increased investment in transportation infrastructure.

A good example of a government-funded (state and federal) intermodal terminal is South Station in Boston. As soon as the bus deck is completed, it will be up and running fully, serving Amtrak, intercity bus, and local rail transit patrons.

The Impact of Subsidized Competition

Federal subsidies have kept the intercity bus industry at a severe competitive disadvantage. The 1992 GAO study cited earlier concluded:

While bus subsidies increased to \$0.07 per passenger in the 1980s, Amtrak subsidies increased to more than \$50 per passenger. Because train travel is more comfortable than bus travel, subsidized rail fares made it difficult for intercity buses to retain ridership where they competed with Amtrak.³

We understand, of course, that Amtrak is not within the jurisdiction of this committee. We keep hoping that its funding would be contained. We would be remiss, however, if we did not commend the committee for curbing the subsidized ICC-authorized charter bus competition of public transportation authorities which existed throughout the 1960s and 1970s.

Section 3(f), which was added to the Federal Transit Act in 1974 (49 U.S.C. 1602(f)), prohibits recipients of Federal financial assistance for the purchase or operation of buses from foreclosing private operators from the intercity charter bus industry "where such private operators are willing and able to provide such service." As pointed out in the report of this committee:

The Committee agrees with the private charter operators that they should not be put out of business because of the competitive advantage enjoyed by operators receiving Federal capital

³See note 1, supra, at 10.

assistance; on the other hand, grantees of federal assistance ought not to be prohibited from offering to the public needed charter services. (Emphasis added).

After 13 years in gestation, regulations were published by the Federal Transit Administration in 49 CFR Part 604 which, with a few narrowly drawn exceptions, prohibited recipients of FTA assistance for the purchase or operation of buses from engaging in charter service where private operators are willing and able to provide it.

Section 3040 of ISTEA establishes a charter services demonstration program to determine whether there are charter needs which cannot be met by private operators in a cost effective and efficient manner. In ABA's opinion, there are no charter service needs which are not being met, or cannot be met, within the framework of the existing law and regulations. We are cooperating to the fullest with FTA, however, in developing guidelines for the charter demonstration project.

Section 3041 of ISTEA directed GAO to report to the Congress by December 18, 1992, on the extent to which the FTA charter service regulations promote or impede the ability of communities to meet the transportation needs of government, civic, and charitable organizations in a cost effective and efficient manner.

I would like to submit for the record ABA's comments in FTA Docket No. 92-E, Charter Service Demonstration Program; Proposed Rule.

Single State Registration System
for Interstate Motor Carriers

Section 4005 of ISTEA repealed, effective January 1, 1994, the so-called "bingo card" program for State registration of interstate motor carriers. Under that program, carriers were required annually to apply for identifying numbers or stamps for each vehicle they intend to operate in that State during the coming year and to place the stamps or numbers on squares on the back of uniform identification cards. In enacting Section 4005, the Congress concluded that the bingo card system unduly burdens interstate motor carriers and costs carriers up to \$250 million a year while participating States collect only about \$50 million. The Congress also concluded that it should preserve revenues for States that had participated in the bingo card program.

The new law mandates a single State registration system under which a carrier files proof of insurance with a single registration State; pays State registration fees that are then allocated among all participating States; and keeps in each of its vehicles a copy of a receipt issued by its registration State. Regulations proposed by the Interstate Commerce Commission on January 22, 1993, faithfully reflect the purpose and effect of the new law.

The next logical step would be for the Congress, after the States have had time to adjust to prospective losses of revenue, to declare State registration of interstate motor carriers to be an undue burden on interstate commerce. The new registration system enacted by ISTEA, although far better than the system it replaces, is still a relic of the pre-1980 era of strict economic regulation.

Length of Vehicles

ISTEA established that buses may be 45 feet long and that individual states must allow them to operate. ABA had brought the need for this federal preemption to the attention of this committee in testimony several years ago. Prior to ISTEA, there was no federal length specification or limit for buses and States had many different laws, rules, and regulations.

DOT has published a Supplemental Notice of Proposed Rulemaking in the Federal Register informing the States of the length limit and allowable access of buses. Only a few states, notably California, have already changed their laws. Approximately 20 States, most of which allowed the longer buses before ISTEA, allow them now. We anticipate a final rule from FHWA this summer. Hopefully, the remaining States then will comply quickly.

More than 100 45-foot buses are in service now; another 100 are on order and/or in production. Although those on the road are not having trouble, we are concerned as summer approaches with more traffic and inspections. (We also are concerned, although it is not within your jurisdiction, that the national parks have not issued any policy yet for these buses.)

Some isolated problems have emerged, most significantly at the largest bus terminal in the country - - the Port Authority of New York and New Jersey terminal in Manhattan. Negotiations are continuing between the industry and the Port Authority, but to date 45-foot buses may not use the terminal.

Safety Regulation of Private,
Not-For-Hire Carriers

Mr. Chairman, there is one more item I need to cover - - and it is an old saw. We have testified about it a number of times, written letters, encouraged your committee and others to write letters to DOT, etc. Still, the problem has not been resolved.

I speak of the continuing lack of inclusion of private, not-for-hire carriers under the Federal Motor Carrier Safety Regulations. Legislation authorized by this committee and enacted into law in 1984 called for this action; regulations to make it happen have not been issued yet by the FHWA.

Last year, the ISTEA technical corrections bill passed by the House of Representatives contained a provision mandating promulgation of a final rule by a date certain. Unfortunately, that bill did not become law. Consequently, many buses continue to carry passengers in interstate commerce with no federal regulation of the vehicles. At least now the drivers must have a commercial driver license required by federal law, but this is not enough. They still are not covered by all FMCSRs applicable to intercity bus drivers and the vehicles are not covered at all. We believe this is a most important safety issue for your consideration and we appreciate your listening to us yet again asking that it be rectified.

Conclusion

ABA commends the committee for holding these hearings. ISTEA is such innovative, wide-reaching legislation and this kind of careful attention to its implementation is most necessary.

We thank you for inviting us to appear and allowing us to address more than highway provisions. I would be happy to answer any questions you have as well as to furnish any further information that you need.

BEFORE THE
FEDERAL TRANSIT ADMINISTRATION

49 CFR PART 604

Docket No. 92-E

CHARTER SERVICE DEMONSTRATION
PROGRAM; PROPOSED RULE

COMMENTS OF
AMERICAN BUS ASSOCIATION

These comments are filed by the American Bus Association (ABA) in response to the Notice of Proposed Rulemaking published October 28, 1992, in the Federal Register (57 Fed. Reg. 48924).

ABA is the national trade association for the intercity bus industry. The Association has more than 500 members who, with only a few exceptions, transport passengers in charter operations. All of these members would be materially and adversely affected if FTA grantees were permitted to engage in unrestricted charter bus service.

STATUTORY AND REGULATORY
BACKGROUND

FTA's charter service regulations are based on two provisions of the Federal Transit Act of 1964, as amended. First, section 12(c)(6) of that Act defines "mass transportation" as transportation by bus --

which provides to the public general or
special service (but not including school

buses or charter or sightseeing service) on a regular and continuing bases.

49 U.S.C. 1608(c)(6).

Second, section 3(f), which was added to the Act in 1974, provides that--

no federal financial assistance under this Act may be provided for the purchase or operation of buses unless the applicant . . . enter[s] into an agreement with the Secretary that. . . [it] . . . will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service . . .

Pursuant to that statutory authority, FTA published charter service regulations on April 13, 1987, which, with a few narrowly drawn exceptions, prohibit a recipient of FTA funds for the purchase or operation of buses from engaging in charter operations.

49 CFR Part 604.

Under FTA's charter service regulations as revised on April 13, 1987, a recipient of Federal funds is prohibited from providing charter service unless one of the following five exceptions applies:

- (1) These is no willing and able private operator;
- (2) The private charter operator does not have the capacity needed for a particular charter trip;
- (3) The private charter operator is unable to provide equipment accessible to the elderly and to persons with disabilities;

- (4) Charter service provided by a private charter operator in non-urbanized areas would impose an undue hardship on users; or
- (5) Private charter operators are not capable of providing all of the service required for special events.

On December 30, 1988, the exceptions noted above were broadened (1) to permit the use of FTA-funded equipment and facilities in charter service under contract with governmental entities or with non-profit organizations exempt from taxation under sections (1), (3), (4), and (19) of the Internal Revenue Code, provided that the involved charter trips involve transportation for a significant number of passengers with disabilities, and (2) to permit the use of FTA-funded equipment and facilities in nonurbanized areas for the entities and organizations described in (1) above if more than 50 percent of the passengers on the involved charter trips are elderly persons. The exceptions carved out by the 1988 amendments to the charter service regulations are codified at 49 CFR sections 604.9(b)(5) and (6).¹

The proposed regulations implement Section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) which establishes a demonstration program under which transit operators subsidized by FTA may provide certain charter services not permitted under the existing regulations. Under the demonstration

¹ The 1988 amendments also authorized FTA grantees to provide charter service under direct contractual arrangements with customers pursuant to agreements between such grantees and willing and able private operators in the area. 49 CFR 604.9(b)(7).

program, transit operators would be permitted to provide charter service for the purpose of meeting the transit needs of government, civic, charitable, and other community activities "which otherwise would not be served in a cost effective and efficient manner."

THE THRESHOLD QUESTION

A key threshold question in drafting regulations for the demonstration program is:

What charter service needs are not being met, or cannot be met, under the exceptions enumerated in paragraphs (1) through (7) of section 604.9(b) of the present regulations?

If the charter service needs of government, civic, charitable, and other community organizations are already being met, or can be met, in a cost effective and efficient manner, no new competitive service is authorized by section 3040 of ISTEA. Accordingly, the application should set forth in considerable detail the type of charter service that would be provided for governmental, nonprofit, and other community organizations during the period of the demonstration.

Under the rules proposed, there is no requirement that the application describe the service proposed or explain why such service would be consistent with the requirements of section 3040. Although the proposed rules would authorize a State DOT or MPO to

grant or deny an application on the basis of four criteria², one of the criteria is so broad that every application could qualify. For example, since all charter service provided by private bus operators necessarily requires some advance notice, all applications of all FTA grantees would satisfy the following criterion:

(C) Service nature. A recipient may provide unscheduled or demand responsive service [that is, charter service] that could not be provided by a private operator without advance notice or at a substantial surcharge to the customer.

Proposed Rule, section 604.9(b)(8)(ii)(C).

Subparagraph (C) above should be stricken. A criterion on "Service Deficiencies" should be submitted. See pages 8-9, *infra*.

To insure that the statutory threshold requirement is met, each application by an FTA recipient to provide charter service during the demonstration program should identify those groups that are not being served under the current charter regulation but which would be served if the recipient's application were approved.

CONTENTS OF APPLICATIONS TO PROVIDE CHARTER SERVICE

As indicated, the most important element of an application is a showing that the charter services to be provided satisfy the statutory requirement of meeting the needs of government, civic,

² Section 604.9(b)(8) provides that applications to provide charter service in the selected sites will be granted or denied on the basis of the following four criteria: (A) Cost evaluation; (B) Equipment uniqueness; (C) Service nature; and (D) Specific local factors.

charitable, and other community organizations which otherwise would not be met in a cost effective and efficient manner. Applications should set forth:

- (1) The geographic area of the proposed service and the names and addresses of private charter operators serving such area;
- (2) An explanation as to why the charter service proposed cannot be provided by private charter operators in a cost effective and efficient manner;
- (3) Applicant's fully allocated cost of providing some of the charter services proposed;
- (4) The methodology used in the computation of fully allocated costs;
- (5) If the proposed charter services have been provided by private operators, a statement as to why such service is not economical or efficient;
- (6) The extent to which private bus operators have been consulted in regard to the proposed service and the extent to which such operators will coordinate their efforts with those of the applicant; and
- (7) A commitment to disclose, upon request, to FTA and to private operators in the area all relevant traffic and cost data relating to charter services provided under the demonstration program.

CRITERIA FOR APPROVAL
OF APPLICATIONS1. Cost Evaluation

ABA has no objection to the first sentence of the cost evaluation criterion. In evaluating applications, it would be relevant if the applicant could show that it can provide charter service "at a significantly lower cost than can private charter operators." Proposed Rule, section 604.9(b)(8)(ii)(A).

We believe it is unnecessary and would be a mistake, however, to attempt to define or to quantify what is a "significantly lower cost." The second sentence of the subparagraph (A) illustrates one of the problems and should be deleted. A comparison of the "average cost of service" by private charter operators and an FTA recipient's "fully allocated cost of providing the service" is not a comparison of apples and apples.

We recommend, therefore, that the second sentence of subparagraph (A) be changed to read as follows:

Cost differences should be evaluated on the
basis of the fully allocated cost of providing
the service.

2. Service Nature

The third criterion ("Service Nature") should be stricken because it could be used to justify any charter service application that any FTA recipient might file.

The criterion is explained as follows in the preamble to the proposed rule:

A State DOT or an MPO may grant an exception if the nature of the service is such that only an FTA recipient can practically provide it.³

There is no charter service which, by its nature, can be provided practically only by an FTA grantee. In attempting to justify the criterion on "Service Nature", the preamble goes on to state:

Public mass transit schedules also may make it impractical to lease public transit equipment to a private operator for certain types of service and at certain times of day.

The import of the statement is not clear. If is not practical, for example, to lease FTA-funded buses to private bus operators during peak hours, it is no less impractical for the FTA grantee to provide charter service during such hours.

The proposed rule on the "Service Nature" criterion reads as follows:

A recipient may provide unscheduled or demand responsive service that could not be provided by a private operator without advance notice or at a substantial surcharge to the customer.

All charter bus service is demand responsive and all such service requires some advance notice. That is true irrespective of whether the service is provided by a public or by a private operator. The criterion should be deleted and the following language substituted:

3. Service Deficiencies

FTA may grant an exception if an FTA recipient can demonstrate that private bus operators are

³ Part III, C.3 of the Notice of Proposed Rulemaking.

unwilling or unable to provide the proposed service or if the service they provide is inadequate, not fully responsive to customers' needs, or inordinately expensive.

FTA SHOULD BE THE
DECISIONMAKING BODY

Under the proposed rule, either a State DOT or MPO would be empowered to rule upon applications by FTA recipients to provide charter service during the demonstration. Any such abdication of responsibility by FTA would compromise the objectives of the demonstration program. ABA strongly urges that FTA review and grant or deny all applications.

First, the FTA's charter service regulations are national in scope. Their interpretation and enforcement is an FTA responsibility. A demonstration program which may be the basis for modifying the current regulations is a Federal responsibility which should not be delegated.

Secondly, considerations of uniformity require that FTA be the sole decisionmaking body.

Third, important new responsibilities were thrust upon MPO's by ISTEA. It is doubtful that MPO's could handle responsibilities under the demonstration program, most of which are alien to their prior experience.

And, finally, although the charter service provided under the demonstration program may be local in nature, the conditions and circumstances surrounding such transportation will be essentially

the same in urban areas across the country. FTA should assume full responsibility for planning and carrying out the demonstration program and should not delegate any operational responsibilities to a State DOT or MPO.

ABA RESPONSE TO
SPECIFIC QUESTIONS

Eight specific questions are propounded in Part V of the Notice of Proposed Rulemaking. ABA's response to those questions is as follows:

- Q. Who should comprise the advisory panel that makes recommendations to the State DOT or MPO, and who should appoint its members?
- A. As explained on page 9 of these Comments, ABA believes that the decisionmaking body should be FTA rather than a State DOT or MPO. An advisory panel of "four to six persons, equally representative of public transit providers or local business organizations and local private operators" should be satisfactory. Members of the advisory panels should be appointed by FTA.
- Q. Should there be criteria for exceptions other than those listed in subsection III(C) above?
- A. Yes. For the reasons set forth at pages 7-9 of these Comments, the third criterion ("Service Nature") should be eliminated and a new criterion, "Service Deficiencies", substituted.
- Q. When evaluating public and private costs, what difference should be considered "significant"?
- A. In our opinion, a difference of 20 percent between the fully allocated cost of providing charter service by an FTA grantee and the charter coach charges of a private operator for comparable service could be considered "significant" but we believe it would be a mistake to attempt to specify differences that are "significant."
- Q. Which groups are not being served under the current regulations?

- A. ABA is not aware of any groups that are not being served under the current regulations in an efficient manner and at reasonable charges. FTA grantees who propose to provide charter service under the demonstration program should identify in the applications those groups which are not receiving economical and adequate service from private providers.
- Q. Should there be an appeal to the FTA of a decisionmaker's denial or granting of an exception?
- A. FTA should be the decisionmaker. There should be no appeal from its decision.
- Q. Should the FTA conduct statewide demonstrations or demonstrations in selected sites in not more than four states?
- A. FTA should conduct demonstrations in selected sites in not more than four States as proposed in Part III, G of the Notice of Proposed Rulemaking.
- Q. If demonstrations are conducted in pairs of sites, should more than six sites be selected?
- A. No.
- Q. What additional data should be collected during the demonstration program?
- A. Data should be collected, and be made available to FTA and to private operators in the involved area, on the costs associated with providing charter service during the demonstration program, together with the methodology employed in calculating the fully allocated costs of service.

CONCLUSION

For the reasons set forth above, ABA respectfully requests that the proposed rule be modified.

Respectfully submitted,

Susan Perry

Susan Perry

Senior Vice President-
Government Relations

American Bus Association

1015 15th Street. N.W.-#250
Washington, DC 20005

DATED : December 18, 1992

DUE : December 28, 1992



Statement of Associated Builders and Contractors

Presented by

**Cordell Peterson, President
Peterson Contractors, Inc.**

before the

Subcommittee on Surface Transportation

House Public Works and Transportation Committee

April 21, 1993

Speaking for the Merit Shop

**729 15th Street, N.W.
Washington, D.C. 20005
(202) 637-8800**

Good morning. My name is Cordell Peterson and I am President of Peterson Contractors, Inc., a highway contracting firm located in Reinbeck, Iowa. On behalf of the Associated Builders and Contractors (ABC), I appreciate this opportunity to comment on the implementation of the Intermodal Surface Transportation Efficiency Act (ISTEA).

Associated Builders and Contractors represents over 16,000 contractors, subcontractors, material suppliers and related firms from across the country and from all specialties in the construction industry. Our diverse membership is bound by a shared commitment to the merit shop -- the most efficient construction technique in America. The merit shop philosophy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding, assures taxpayers and consumers the most value for their construction dollar. With 75 percent of construction done today by open shop contractors, ABC is proud to be their voice.

When ABC last came before you two years ago the Committee was conducting a comprehensive series of hearings to identify needs and priorities for reauthorization of the federal aid highway program. ISTEA, the product of those many hearings and extensive debate, sets the mark for future transportation policy. Today, we appreciate the opportunity to appear once again before the Surface Transportation subcommittee, this time to comment on the progress of ISTEA and the many opportunities yet unrealized by this legislation.

ABC believes that there are three aspects of ISTEA that must be addressed for the program to reach its intended potential and ultimately lay the groundwork for future surface transportation legislation: funding of the act, the flexible nature of those funds, and the approval of the National Highway System.

FUNDING

Our nation's infrastructure, a vital component of our future economic growth and stability, continues to suffer from a serious lack of investment. This investment gap imposes rising costs on our nation's productivity, inhibiting our ability to compete in an increasingly global economy and threatening our basic quality of life. Since passage of ISTEA, appropriations have failed to meet authorizations by some \$4.3 billion. State and local governments who developed their transportation programs based on a fully-funded five-year federal transportation program have had to make quite a few adjustments based on the ISTEA shortfall.

ABC is pleased that the recently released Department of Transportation budget allocates \$20.6 billion for the Federal Highway Administration to fully fund the program for FY 1994. Furthermore, ABC appreciates the efforts of Secretary Pena and the

members of this Committee to reach an agreement with the Office of Management and Budget to end the diversion of the federal gas tax currently going to the general revenue fund.

ABC has long advocated that revenues raised by user fees and collected in transportation trust funds should be allocated and spent solely for their intended purposes. The return of the 2.5 cent diversion to the Highway Trust Fund is a positive signal to send to the millions of highway users that contribute in good faith to the maintenance and improvement of our roadways every time they visit the pump.

We are of the understanding that the gas tax revenue diverted to the general fund will be returned to the Highway Trust Fund in October, 1995. It is our concern, however, that unless the 2.5 cent gas tax diversion is returned to the trust fund before FY 1996, the trust fund will be sorely underfunded. There is the possibility that, in light of other Administration policies and proposals, the Highway Trust Fund will not be able to sustain the program in the out years of ISTEA, even with the return of the diverted funds. Returning the 2.5 cent diversion earlier than FY 1996 could help to offset other drains on the trust fund such as the alternative fuels tax exemption and the effects of the proposed Btu energy tax.

In planning for a continuing highway program, serious consideration must be given to repeal of the ethanol exemption from the motor fuels tax. We believe continuation of the current gasohol exemption undermines efforts to invest in our nation's infrastructure. The current exemption costs the Highway Trust Fund \$500 million each year with an additional \$200 million diverted from state and local transportation needs. The gasohol subsidy was originally intended to promote the use of environmentally friendly fuels. Now that Congress has mandated the use of these fuels, we believe a subsidy of this nature is no longer necessary, and at the very minimum the highway program should not bear the brunt of a subsidized alternative fuels program.

In light of President Clinton's proposed Btu tax on energy and the fact that the tax levied on oil is twice that levied on other forms of energy, it is expected that the Administration's tax would achieve their goal of reduced gasoline consumption. The higher price of gasoline due to the proposed oil tax supplement would lead to a drop in sales, which is supposed to reduce the United States' dependence on foreign oil. The reality, however, is that higher gasoline prices resulting from an inequitable energy tax has a direct bearing on the Highway Trust Fund, and ultimately on implementation of ISTEA and future surface transportation programs. A further reduction in gas tax receipts due to higher gasoline prices, full funding of ISTEA seems, regrettably, unlikely.

ABC firmly believes that revenues raised by user fees and collected in transportation trust funds should be allocated and spent solely for their intended purposes. We believe that the Highway Trust Fund should be made permanent and taken off-budget; the current practice of holding money in the trust fund to mask the size of the federal deficit is not constructive policy for the country and certainly not for the our nation's transportation program.

DAVIS-BACON

With the funding constraints that we have already experienced under ISTEA and the anticipation of less than full funding for the life of the Act, ABC proposes reform of the federal prevailing wage law to help stretch the limited federal funds available. ABC continues to advocate a minimum Davis-Bacon Act threshold on federal construction projects of one million dollars.

As you know, the Davis-Bacon Act mandates "prevailing wage" rates be paid on all federal or federally-assisted projects of \$2000 or more. The original intent of the act was to protect local workers from itinerant laborers who worked for lower wages. This noble intent has been replaced by an outdated measure hampering competition, disrupting local economies and restricting job opportunities for small businesses.

With immediate needs for highway and bridge construction and repair far outstripping the current and anticipated supply of available funds, reform of the Davis-Bacon statute can provide additional dollars to fund our infrastructure needs.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

ISTEA continues the Disadvantaged Business Enterprise Program (DBE) whereby 10 percent of federal-aid highway, highway safety and mass transit program funds are to be awarded to DBE contractors. This stringent 10 percent DBE requirement fails to recognize the need for flexibility and cooperation which we believe Congress had originally intended in its minority provision.

Instead, ABC believes that partnering and mentoring programs that help disadvantaged firms and their employees become more skilled at both the craft and management levels are most successful. Training is an investment in the future and will better equip DBE firms with the skills necessary to successfully compete in the absence of preferential treatment. ABC has formed a Task Force to identify and implement private sector initiatives to facilitate the participation of women and minorities in the construction industry. The Task Force is focusing on education and training opportunities to provide women and minority entrepreneurs access to the skills and knowledge necessary to be competitive and earn the rewards which accompany success in the free enterprise system.

Additionally, ABC has focused a large portion of its financial, membership and staff resources on the issue of craft and supervisory training. In January, 1993, ABC completed a special report on training issues within the U.S. construction industry which we delivered to President Clinton and the Congress. The report outlines the progress of ABC, along with sixteen of the nation's largest open shop contractors, in developing standardized craft training; our Wheels of Learning program has been developed to more efficiently and effectively train and upgrade the construction workforce. We have long recognized that if the United States is to foster expanded opportunities for all its citizens and maintain its competitiveness, hundreds of thousands of additional highly skilled workers will be needed between now and the year 2000. Training is the only solution.

Although individual ABC members participate in the DBE program, ABC officially opposes restrictive bid practices. This policy stems from our belief that set-aside programs have failed to prepare certified DBEs for success in an open, competitive bid situation. ABC supports the Department of Transportation's proposed revisions to the DBE program which should achieve two important aims: to provide participating DBEs with business development skills and to ensure their graduation into the open bid environment.

FLEXIBILITY OF FUNDS

ABC supports the flexible funding structure of ISTEA, allowing states and localities to decide the best use of the available federal funds. Because transfer provisions are an option that may be taken by state and local officials, input from many different transportation users and suppliers should be gathered when making these transfer decisions. Involving transportation planning officials, transportation providers, and transportation consumers in the planning process facilitates coordinated planning and the continuity necessary to meet our transportation needs of the future.

The increased flexibility of the Urban and Rural Program empowers states to choose how they will improve their condition. States are now able to focus on internal transportation issues such as congestion relief, rural access and intermodal links. The capability of states and localities to prioritize their transportation demands and allocate funding as needed is a basic necessity for transportation efficiency in the future.

As the program is implemented, ABC will continue to monitor the transfer of highway funds under ISTEA. While the funding flexibility of ISTEA allows transfers between highway categories, it also allows transfers from highway categories for transit uses, as well as transfers from highways to transportation enhancements, such as acquisition of scenic, historic, or archaeological sites. When ISTEA became law, it made at least \$90 billion of highway user

taxes eligible for transfer to fixed rail transit, bicycle paths, magnetic levitation trains, the restoration of historic railroad stations, and a host of other non-highway purposes. In 1992, \$261 million was transferred from highways to transit projects in 15 states. Estimates suggest that as much as \$500 million could be transferred to non-highway projects this year alone. There have been no transfers from transit to highway accounts. While ABC supports the flexibility of ISTEA, we are concerned that in some cases funds are not being used for their intended purpose.

The increased emphasis placed on planning in ISTEA and the reliance on Metropolitan Planning Organizations will be invaluable in properly coordinating needs and planning for the future. Governmental partnerships established at every level to investigate transportation alternatives and propose solutions appropriate for specific jurisdictional boundaries will facilitate an integrated and fluid travel system.

An upcoming series of urban mobility workshops, sponsored by the Federal Highway Administration, the Coalition for Safe and Efficient Transportation and the Highway Users federation--both of which ABC is a member--are designed to bring business leaders together with metropolitan planning organizations and state transportation officials on decisions on transportation spending. The workshops are designed to bring the business community into the transportation decision making process, which ABC views as most important.

NATIONAL HIGHWAY SYSTEM

ABC believes that the designation and approval of the National Highway System routes will truly exemplify the foresight of America's transportation leaders who brought ISTEA to life. The concept of maintaining, modernizing, and managing our nation's roadways to better link our towns and cities is ultimately the backbone of the surface transportation program. The National Highway System (NHS) will consist of 155,000 miles of roadway including all Interstate routes, urban and rural principal arterials, the defense strategic highway network, and strategic highway connectors. The deadline for submission to Congress of the proposed NHS map is December, 1993; Congress must then approve the map by 1995, or the program funding will be lost. ABC is confident that the NHS routes submitted to the Federal Highway Administration will be approved by Congress in a timely manner.

The general aims of the NHS--to achieve an integrated urban-rural system that connects major population centers, international border crossings, ports, airports, and public transportation facilities--will provide countless benefits for not only the

transportation industry, but the overall economy of the nation. As a national association representing contractors from all sectors of the construction industry, ABC is encouraged by the anticipated benefits our industry will encounter from the NHS.

It is an obvious assumption that highway contractors will be active on NHS routes. What may not be as obvious is the effect the NHS will have on the commercial, industrial, and residential sectors of the construction industry, as well as on overall economic growth. In several published papers, Dr. David Aschauer, professor of economics at Bates College (Lewiston, ME), has studied the effects of transportation infrastructure on regional and national economic growth. In a 1990 study published by the Economic Policy Institute, Dr. Aschauer finds that "the nation's stock of 'core infrastructure' (streets and highways, mass transit, airports, water and sewer systems, and electrical and gas facilities) are intrinsic to almost every sector of private production and are especially influential in the determination of total national economic output." In his 1990 article, Highway Capacity and Economic Growth, Aschauer finds that:

An increase in the stock of highways for a given locale generates a higher return to local, productive activity by raising the level of transportation services available to producers. This higher return to production, in turn, stimulates private investment in these productive facilities. The increased investment carries with it higher growth in output and income for the particular locale.

While Dr. Aschauer's findings are not specific to the National Highway System, ABC believes that the NHS program has been designed with these economic goals in mind. The NHS focuses federal resources on roads that are the most important to interstate travel and national defense, roads that connect rural and urban areas, that link different modes of transportation, and serve international borders.

It is apparent that the NHS will have a direct impact on the transport of people and goods. ABC believes that the anticipated increase in economic growth in a given community will translate into an increase in building and general construction activities.

The mode and the structure of transportation is not the goal in and of itself, but rather it is the facilitator of other societal goals such as economic development, economic growth, and the redistribution of economic activity. Adequate transportation is essential for an active, growing economy. ABC is certain that the designation and approval of the NHS will have a positive impact on countless industries by improving urban transportation, rural transportation and in many cases better linking the two.

We are at a critical juncture in the history of our nation's transportation systems. We must have the best, most efficient

transportation network in the world if we are to compete in an increasingly global economy. With the passage of ISTEA and the designation of the National Highway System, we are improving and expanding our nation's economic foundation.

On behalf of the Associated Builders and Contractors, I again want to thank Chairman Rahall and the Subcommittee on Surface Transportation for the opportunity to share our views on the implementation of ISTEA.

**STATEMENT OF WILLIAM J. ROBERTS
LEGISLATIVE DIRECTOR
ENVIRONMENTAL DEFENSE FUND**

before the

**SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES**

April 21, 1993

Good morning. My name is William J. Roberts, and I am the Legislative Director of the Environmental Defense Fund, a national environmental advocacy organization with over 200,000 members. EDF has played an active role in recent legislation addressing surface transportation issues, including the Clean Air Act Amendments of 1990 (CAAA) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

The links between the environment, energy security, global warming and other issues are so tightly intertwined with the nation's transportation policies that EDF, along with a number of other environmental organizations, have made reform in national transportation policy a major priority. In 1990 with the Clean Air Act Amendments and in 1991 with ISTEA, the Congress acted on these important links by overhauling a generation-old national transportation policy that largely ignored the environment -- particularly its impact on air pollution.

Since the enactment of the CAAA and ISTEA, we have heard complaints about the potential costs of compliance, particularly with the CAAA. In our view, these complaints miss the mark. The real tragedy is the cost our nation will incur if we continue with "business as usual." Our current transportation policy relies predominantly on the most inefficient and costly mode of transportation -- the single occupant automobile. By simply leveling the playing field and imposing on automobiles the real costs of driving, vehicle use will decline and air quality will improve. In our view, policies that promote economic

efficiency will result in environmental improvement. Therefore, lowering overall transportation costs will lower environmental costs.

As long as we tolerate policies that are heavily biased toward the automobile, transit and other environmentally benign modes will suffer a competitive disadvantage and will be fighting an uphill battle regardless of the level of federal financial support. If we successfully remove these market distortions, EDF believes that people will rationally move toward other modes, such as mass transit. Although EDF strongly supports additional federal support for mass transit and increased funding flexibility, the Congress can do as much or even more to help by refusing to play favorites.

Thus, it is with an eye on economic efficiency and a "level playing field" that EDF presents this testimony.

Transportation and Urban Smog

Before addressing the critical linkages between transportation and an healthy environment, its important to understand why transportation policy is so important to the environment. In 1990, this Committee, along with the rest of the Congress and the President, completed work on a comprehensive set of amendments to the Clean Air Act. With literally tens of millions of Americans breathing unhealthy air in over 100 metropolitan areas, the need for action is overwhelming. While factories and other so-called stationary sources contribute to air pollution, the principal source of pollution for many communities is the automobile. Over the years, the federal government has tried to control the emissions from cars through ever tighter emissions standards and, most recently, through the promotion of cleaner burning gasoline and alternative fuels.

Although these are critical restrictions, as vehicle trips increase at a rate 3 to 4 times the rate of population growth, it is only a matter of time before these improvements in automobile design are overwhelmed by more people driving longer distances more often. In

fact, the Senate Environment and Public Works Committee, in its report accompanying the Clean Air Act Amendments, recognized that without additional measures to address the "use" of the automobile, the other emission reduction requirements will be overwhelmed shortly after the turn of the century. As a result, the Congress and the President included important new changes in the 1990 Clean Air Act Amendments to address automobile use which underscore two major new themes on the impact of vehicle use on air quality.

First, transportation planning must mesh with air pollution planning. The CAAA contains requirements for the states to develop cleanup plans for urban areas that have failed to attain federal air quality standards. Historically, however, transportation plans have never been considered a component of air plans. In effect, transportation planning and construction was undertaken largely without regard for air quality. The new CAAA bridges the gap between air plans and transportation plans by requiring transportation plans to meet the air quality objectives of state air plans. For example, if a state air plan calls for a 3 percent annual reduction in vehicle emissions, the transportation plan must either meet those targets or projects in a transportation plan cannot receive federal funding.

Second, metropolitan communities face tough sanctions if they fail to comply. Prior to the CAAA, sanctions were imposed at the discretion of the EPA. Under the new CAAA, sanctions are imposed automatically against a nonattainment area if the state or nonattainment area fails to comply with any requirement under the Act. There are two sanctions that can be imposed: withholding highway funding from the nonattainment area and requiring new stationary sources in the nonattainment area to obtain 2 for 1 offsets (i.e., find reductions of 2 tons of emissions for every one ton emitted by the new source). If a nonattainment area persists in noncompliance for 24 months or more, both sanction apply.

Everyone agrees that these are very demanding requirements. They were enacted to deal with an equally demanding national health problem -- urban smog. But, they were not adopted in a vacuum. Congress imposed these requirements as an overlay on an extensive and complex transportation system; a system tilted heavily in favor of the source of much of

the nation's air pollution problem -- the single occupant automobile.

Getting the Price Right: Overcoming the Automobile Bias

Although several of the most egregious federal policies favoring the automobile were eliminated in ISTEA, as we discuss below, many still remain. Recent research by the World Resources Institute (WRI) shows that literally hundreds of billions of dollars are spent each year to support automobiles, over and above the amount contributed by automobiles in the form of gasoline taxes. WRI's research convincingly debunks the notion that automobile use is fully supported by "user fees." According to WRI senior associate Dr. James J. MacKenzie, "[w]e have concluded that as a result of the failure to pay directly their fair share of driving costs, American car and truck drivers are being effectively subsidized in amounts of hundreds of billions of dollars per year. The end results are artificially low driving costs and excessive levels of driving, sprawl, traffic congestion, accidents, oil imports, air pollution and greenhouse gas emissions." Here are a few examples:

Subsidized Parking. WRI found that over 93 percent of American commuters (more than 85 million workers) park free at work. This free parking benefit is worth roughly \$85 billion per year and is provided as a tax-free benefit under U.S. tax policy. It has been estimated that eliminating this tax subsidy would reduce solo driving by 20-40 percent and the number of cars by 15-40 percent. In fact, Professor Donald Shoup of the University of Southern California has calculated that simply giving employees the option of receiving cash for their free parking benefit will reduce driving even without changing U.S. tax policy. He has calculated that some employees would be willing to give up their parking space and take the cash, even with increased income tax liability. Prof. Shoup estimates that requiring employers to simply offer a cash benefit in lieu of parking would reduce single occupant commuting by 10 percent and increase federal tax receipts by \$1 billion per year. The National Energy Policy Act of 1992 took an important step by capping the tax free parking benefit and increasing the tax free benefit for transit, but the vast majority of parking benefits remained untouched.

Congestion. Lost productivity, increased stress, air pollution and lost work hours are examples of the costs from ever more crowded roads and highways. Some of these costs are borne by the drivers themselves, some by employers and businesses, and others by the public at large. WRI estimates the total costs of congestion at \$100 billion per year.

Air Pollution. The costs of unhealthy air include medical expenses and property damages which are not paid by drivers and which WRI estimates at \$10 billion per year.

Clearly, one of the most economically and environmentally sensible steps we can take is to ensure that drivers pay the real costs of vehicle use. This must be done by setting the "price" of driving at a level that accurately reflects its actual costs, as well as the "externalities" driving imposes on society as a whole. Setting the right price would allow the market to operate more efficiently, eliminating overuse of the automobile and achieving a more efficient mix of transportation modes. Fuel efficient vehicles and electric cars would become more attractive economically, as would alternative modes of travel such as transit, bicycling, and walking. Motorists would be inclined to car pool and to drive more slowly, saving fuel and reducing the occurrence of serious accidents.

Once pricing factors have been adjusted to accurately reflect the costs of driving, the demand for other modes of travel would increase. As this demand increases, transportation alternatives to meet the demand must be available and consumers/taxpayers will be more willing to pay for them.

We recognize that the subject of this hearing is focused on the implementation of ISTEA, but the success or failure of this important major legislation, particularly as it relates to clean air, is functionally dependent on many factors outside the specific parameters of that legislation. It is useful, in our view, to consider ISTEA, along with the Clean Air Act Amendments, as one of several measures designed to deal with the environmental problems of transportation. But, despite the interconnections between the marketplace, transportation and air pollution, any effort to send the correct price signal should begin with the federal

government. If it is federal policy to have clean air and to promote the efficient movement of people and goods, the federal government must be prepared to get its fingers off the scales of competition in transportation.

Reforming Federal Transportation Spending Policies

Although the estimated annual subsidies for driving are in the hundreds of billions of dollars, it makes no sense for the federal government to compound this bias in its roughly \$20 billion per year investment in the nation's surface transportation infrastructure. But, for the last 30 years or more, the federal government has reinforced this bias.

Fortunately, Congress took major strides to clear away this bias when it passed ISTEA. In ISTEA, Congress tackled a number of major issues that have lent historical support to the automobile over other modes. However, there is a clear need, particularly at the federal level, to accelerate and improve the implementation of the major reforms of ISTEA. We have found tremendous inertia among state and local officials to continue with "business as usual." Much of this inertia is not mean-spirited, but simply the product of decades of expectations that grew up during the construction of the Interstate highway system. The post-Interstate era is still a blank canvas, and many states and localities are clearly uneasy with their role in this new world.

Before discussing specific shortcomings in ISTEA implementation, it is worth making several overall observations. First, the lack of progress is in large measure attributable to the previous Administration's unwillingness to embrace its new role and compel a change in national transportation dictated by ISTEA. The Bush Administration failed to implement the critical regulations needed to change transportation policy under both the Clean Air Act Amendments and under ISTEA. Thus, states and MPOs were given the benefits of ISTEA - increased funding flexibility - - with none of the requirements - - conformity and transportation planning.

It is our hope and expectation that the Clinton Administration will seize on its new role as defined by ISTEA and CAAA and begin to turn the direction of national transportation policy. This means fully implementing the requirements of the Clean Air Act and compelling the transportation sector to do its part to control emissions. The days of uncontrolled VMT growth should end and, at a minimum, we should be finding ways to offset the emissions caused by growth. Technology is part of the answer, but only part. We need to focus on the pricing disparities discussed earlier to fully restrain VMT-induced increases in emissions.

Second, as we note below, ISTEA is not a blank check to the states and MPOs. Funding flexibility was accompanied by tough planning requirements that must be enforced by U.S. DOT. Important national interests are at stake, from congestion to air pollution to mobility, and the planning process must address those national concerns -- as well as important local and state concerns. So far, U.S. DOT has essentially abdicated its role as guardian of ISTEA's planning requirements and has instead largely delegated these responsibilities to the states and MPOs. That means no one is protecting national interests, and we hope that the Clinton Administration will fill this vacuum created by the previous Administration.

Third, federal, state, and local officials need to recognize that other interests must be incorporated into the transportation investment decision-making process. Air pollution officials, environmentalists, energy officials, planning officials, and other interested parties must be allowed to fully participate. The days of giving the public 24 hours to review a transportation improvement program without any background materials must end. The bright sunshine of public discourse must replace the backroom political dealmaking.

With these general observations in mind, we'd like to outline the major changes articulated by ISTEA and our assessment of their progress to date.

Funding Flexibility. For the first time, ISTEA allows highway funding to be used for

transit in order to better serve a state's or region's highest transportation priorities. When developing plans to achieve improved air quality as mandated by the CAA, funding flexibility permits states and localities more opportunity to implement innovative programs which are suited to that area's unique transportation concerns. For instance, if a major urban area believes that the best way to reduce vehicle emissions is through major new investments in transit, it would be permitted to make those investments. If another community wanted to establish travel demand management programs, such as subsidized car-pooling, it could do so.

Clearly, transit needs can be met not only through the transit account of the Highway Trust Fund. Major funding opportunities exist in title 23 funding categories. Regrettably, the early indications are that many states are refusing to exercise the opportunity presented by funding flexibility. Last year, only \$300 million out of \$17 billion (less than 2 percent) of federal highway funds were "flexed" to transit. More aggressive use of ISTEA funding flexibility provisions can provide a much needed source of funding for mass transit. In our view, the best way to encourage more shifts in funding is to enforce the requirements of the Clean Air Act and ISTEA. Compelling real reductions in emissions and forcing a rigorous planning process will shift the focus of local debate to alternatives other than single occupant vehicle highway capacity. Unless the restraints from ISTEA and the Clean Air Act are made real, the impetus to change investment patterns will not exist. Transit's future and the future of other modes generally, depends on tough enforcement of the Clean Air Act and ISTEA.

Fund Matching. Prior to the enactment of ISTEA, 90 to 95 percent of state highway investments were eligible to receive federal matching funds, while transit projects were entitled to receive fund matching for less than 30 percent of their transit investments. ISTEA eliminated the bias in favor of highway spending by mandating a uniform 80 percent matching for transportation programs irrespective of the ultimate use of the funds. We believe these changes have helped take away one of the impediments to flexible funding, but many states are operating with state Constitutional provisions barring the use of state funds for anything other than highway projects. We would encourage the Subcommittee to examine ways to circumvent this restriction, perhaps making the receipt of federal funds dependent on

changes these types of state policies.

Apportionments. ISTEA eliminated apportionment formulae that distributed funds among the states based upon VMT, which had the perverse effect of penalizing states that took aggressive steps to reduce VMT. ISTEA now apportions funds using fixed formulae which neither penalize nor reward states that reduce VMT. EDF believes that much more can be done to encourage VMT reductions by directly tying apportionments to efforts to reduce VMT. Because transit can bring about reductions in VMT, revisions in apportionment formulae to reward such investments would provide a big boost for transit investments. However, we believe much more must be done to directly reward those states that reduce VMT relative to other states. Good deeds should be rewarded and investments that worsen congestion and air quality should be penalized.

Planning. ISTEA also helped further air quality goals by implementing a rigorous set of planning requirements to accompany the generous new funding flexibility. ISTEA is not an unconditional federal grant program. Along with new flexibility, ISTEA establishes a rigorous set of planning requirements to ensure that national, as well as local, objectives are attained. U.S. DOT is obligated under ISTEA to ensure that these requirements are met -- most specifically through the certification process of section 134.

The section 134 certification process is one of the few ways the new requirements of ISTEA will be enforced. U.S. DOT should be encouraged to make this a strong requirement. In particular, any regulations implementing section 134 must make crystal clear which steps must be taken to ensure certification and, more importantly, what actions will lead to a denial of certification.

The proposed planning regulations developed by U.S. DOT simply restate the legal requirements of section 134, but say nothing about the steps that must be taken to ensure certification. In short, we believe that the certification process can be and must be the "floor" of federal compliance with section 134. This requires a clear, explicit, and unambiguous

explanation of the section 134 requirements in the regulations to show what specific actions must be taken to permit certification.

Public Participation. For the first time in many communities, ISTEA will open the door for ordinary citizens to participate in the transportation planning process. Although it is still a dizzying array of acronyms and jargon, the traditional transportation process must be made accessible to the general public. The stakes -- both financial and environmental -- are simply too great.

Unfortunately, in its first year, the performance of even progressive MPOs and states has been disappointing. In some MPOs, TIPs were presented to the public only 48 hours before adoption, with no accompanying support materials. In other cases, no advance notice was provided at all. And, although the statute requires public participation in the "development" of the TIP, virtually no MPOs or states established procedures for public involvement at the developmental stage.

Here, again, U.S. DOT must define minimum requirements. Its proposed planning regulations allow the states and MPOs to define their own notions of public involvement, but past practices make it clear that federal minimum standards are necessary.

Congestion Management Systems/Single Occupant Vehicle Capacity Restriction. Previous guidance and proposed regulations by U.S. DOT has dramatically undermined one of the most important reforms of ISTEA. In nonattainment transportation management areas, the addition of significant single occupant vehicle capacity (SOVs) is prohibited unless the project comes from an approved congestion management system.

Given the existing demand for SOV facilities, this prohibition was intended to be used as a lever to encourage MPOs and states to take seriously the development of detailed, specific and meaningful congestion management systems. In the words of the Senate report, MPOs "must develop a congestion management system to provide for effective management

of new and existing transportation facilities through the use of travel demand reduction and operational changes."

Unfortunately, U.S. DOT has proposed a rule that removes the lever by allowing something called "phase I interim CMSs." Although such a term is nowhere to be found in ISTEA, the proposed rule argues that as long as states and MPOs have begun a process of looking at congestion management (whether or not U.S. DOT has approved either the content or process of the system) new projects can be built. Further, the proposal would unilaterally grandfather all projects that have undergone NEPA review, even though no such grandfather provision exists in ISTEA.

CMSs can be a powerful and meaningful tool to manage the costs, both economic and environmental, of congestion, but only if U.S. DOT compels real changes in system planning and enforces those changes through application of the ISTEA prohibition.

Conclusion.

Much work lies ahead in turning the large ship that has been national transportation policy for the last few decades. It won't be easy and it won't be painless. However, we believe that major change must begin at the top. It must begin with a firm commitment by the Clinton Administration to implement all portions of ISTEA and the Clean Air Act, the painful as well as the less painful. It must be reinforced by a strong vote of confidence by the Congress and particularly this Committee, which played such an important role in the implementation of both of these important statutes. And, finally, it must be coupled with a concerted effort by all of us to educate the American people that this nation's long term interest in a strong economy and a clean environment must lead to changes in our transportation system. It must be cleaner, more efficient and less costly. These were the goals of the Clean Air Act and ISTEA and we look forward to working with the Subcommittee to make them a reality.

**STATEMENT OF
TERRY W. SMITH
ON THE
IMPLEMENTATION OF THE
INTERMODAL SURFACE TRANSPORTATION
EFFICIENCY ACT OF 1991
(ISTEA)
FOR
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APRIL 21, 1993
BEFORE
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I am Terry W. Smith, President of Rock Industries, Inc. in Peru, Indiana. My appearance today is on behalf of the National Stone Association where I serve as Chairman of the Board. I am accompanied by William D. Kelleher, NSA's Vice President for Government Affairs.

Mr. Chairman, the crushed stone industry would like to offer three points related to our industry for the committee's consideration as you review the Intermodal Surface Transportation Efficiency Act of 1991--ISTEA.

- As a capital intensive industry, a reliable and predictable market for our product creates the best environment for investment decisions for both acquiring reserves of aggregate deposits and purchasing plant and equipment. To provide quality aggregate and reasonable prices we need to work together with the public sector to smooth the large fluctuations in the infrastructure construction market.
- By physical volume, our products represent approximately 85 percent of a concrete road and between 95 percent and 98 percent of an asphalt road. Clearly, we need to be involved in any discussion on quality and durability of roads and highways. We would like to discuss with the subcommittee the work being done at the International Center for Aggregate Research at the University of Texas at Austin which we jointly sponsor with the National Aggregates Association through the Aggregates Foundation.
- Finally, both as a user of our nation's road network and a principal supplier to its construction, we believe one of the most important questions before the Congress and your subcommittee is determining the federal role in highway construction and maintenance. We would specifically like to address this issue in the context of the national

highway system proposal and the delineation of responsibilities between different levels of government.

Why Highway Funding Needs to be Reliable

The crushed stone industry has traditionally been cyclical in nature. Approximately half its demand is based on building construction related to housing and commercial development which is driven by shifts in interest rates. The other half of the aggregate industry is based on public works which is driven by the political process.

The imputed cost for the crushed stone industry from the wide fluctuations in public support for infrastructure is estimated to be approximately \$250 million to \$325 million per year based on the standard analysis of the cost to the construction industry of cyclical variations in demand and an overall crushed stone annual market of \$5 billion. However, this cost is not evenly distributed because of the highly localized nature of crushed stone markets. Costs will fall disproportionately on those areas where public support for infrastructure spending has wide fluctuations or investments in highways and other public works are highly dependent on unreliable state and federal programs.

Let me briefly give you some examples of how cyclical fluctuations impact our industry:

- In determining site suitability the ability to accurately forecast long term market potential impacts determinations of transportation access investments for a site, the size of site and amount of reserves to be purchased as part of the initial land acquisition process including buffer zone considerations to adjoining properties. Also market forecasts will determine how much overburden can be economically removed before a commercially viable quarry can be developed.
- The production of aggregate by its very nature is a long-term industry. Issues such as rate of return comparisons to other investments, the size of plant to be established, whether new or used equipment should be purchased or alternatively whether a portable crushing plant should be employed instead of building a permanent facility are all part of capital cost considerations.

Up front costs to prospect, drill, and analyze the geology, test the suitability of the rock for construction purposes, permitting, zoning, and site preparations during construction of the plant require large capital expenditure over a period of years. In major metropolitan areas, costs associated with permitting and zoning total hundreds of thousands or even millions of dollars spread over five or more years. If a substantial

investment in land purchase is added, the amount of money spent prior to making the first sale is usually in the millions of dollars. The higher risk associated with uncertain markets put quarrying investments at a disadvantage when they are compared to shorter more certain investments.

- Labor is the third and most important input influencing production. Labor is most important because the effective use of the other two factors depends completely on the skill of the labor force. In every aspect of the business, labor can make the difference between a highly profitable enterprise and one that is marginal or unprofitable.

Layoffs carry the risk that skilled employees will find other suitable full-time employment. For our industry to invest in training and developing employees and to ask our employees to make a commitment in developing their careers as part of our operations, we need to be able to offer them jobs with a long term future for themselves and their families.

Providing full funding for each year's authorization level for ISTEA is the single most important thing Congress can do to address these issues. Full funding will provide a reliable and predictable source of funds and will encourage states and localities to develop their programs as well.

The Aggregate Industry's Role in Research

There is a need for the aggregates industry to support research into the basic properties of our materials and the proper application of these to design and construction. Aggregates are a vital natural resource which need to be available in each locality and which need to be used efficiently to minimize wasted sizes of crushed stone. Today, research in the uses of aggregates is essentially being done by others outside the industry. We are being told how they intend to use our products, often times not taking advantage of aggregates' inherent qualities. Specifiers are driving the train, without the requisite education and training in aggregates. Arbitrary limits are often imposed without sound technical basis.

Other segments of the construction industry are actively pursuing research into their products (asphalt, portland cement concrete, new geotextiles and recycled materials). However, their interest is not in the basic aggregate properties.

Leadership is needed from the aggregates industry for a commitment to scientific research and education on the basic properties and uses of our own products. By being proactive in education and research, we can take control of our future by demonstrating the superior performance of properly utilized aggregate products.

Authoritative research and education of specifiers, contractors, and materials suppliers is needed.

NSA firmly believes in public-private-academic partnerships to develop and support research related to the aggregates industry. As part of our industry's commitment to this concept, we have joined with our sister-association, the National Aggregates Association, to create the Aggregates Foundation for Technology, Research, and Education. The Foundation has raised over \$4 million from companies and individuals in our industry to fund research in the field. We have recently selected the University of Texas at Austin in cooperation with Texas A&M to be our research center which is known as ICAR--the International Center for Aggregate Research. This consortium will manage and conduct the research program of the Foundation. Further, NSA has recently published The Aggregate Handbook. It is the product of 27 authors drawn from the academic and business communities. The Handbook's publication demonstrates how both sectors can work together to provide vital, authoritative information.

We are already beginning to see progress on research from the efforts in Texas. Dr. Joe Button, a research engineer with the Texas Transportation Institute at Texas A&M, is doing work in conjunction with ICAR on the use of large stone asphalt mixes. Large stone aggregates result in lower production cost for us and with proper mixes it improves pavement performance. Dr. Button notes in an article in the Center's first newsletter, Aggregate Views (see Attachment 1): "when mixture designs are right, the large stone mixes seem to make for roads that stand up to heavy truck loads and high pressure tires."

NSA is also actively reviewing the European experience in building more durable roads and road surfaces. Attachment 2 is a series of articles published in Stone Review, NSA's magazine on "Rutting and Shoving in Asphaltic Concrete Pavements." I would specifically like to highlight the sections dealing with Michigan Department of Transportation's (MDOT) experiments with Stone Mastic Asphalt (SMA). MDOT's program worked very well, however, they brought their aggregates several hundred miles to approximate the characteristics of European pavements. This resulted in a roughly 600% increase in aggregate costs. Clearly, we in industry need to work to develop methods to use local aggregate sources if the MDOT research is to result in cost effective results.

Mandated Use of Crumb Rubber Modifier (CRM)

NSA strongly believes that both the public and private sectors are stewards of the environment and share in the duty to meet our infrastructure needs in an environmentally responsible manner. We further support the concept of establishing specific goals for such issues as recycling scrap tires, however, Congress stifles creativity and innovation and hinders the development of cost-effective technology in

areas like recycling scrap tires when it mandates specific uses for CRM as part of the highway construction process.

Currently, ISTEA mandates the use of CRM in pavements with specific targets for the percentage of pavement to use CRM growing over the authorization period until finally reaching a 20% minimum CRM utilization requirements in 1997 (Section 1038).

While initial research indicates there are potential benefits for using CRM in certain applications, other questions remain as to its durability, the ability to recycle the material over its life-cycle application and safety and health concerns.

In addition AASHTO (the American Association of State Highway and Transportation Officials) has conducted a survey of its members and has estimated that meeting the 1997 CRM goal will add \$1 billion in additional costs to highway construction. This equals a 5 percent reduction in federal-aid highway funds purchasing power at a time when our surface transportation network needs are growing.

NSA Position

The solution to the scrap tire problem does not lie with any specific technology. States should be required to devise their own solutions to meeting the goal of eliminating their existing backlog of scrap tires as well as dealing with the annual accumulation. The Resource Conservation and Recovery Act (RCRA) may be a better vehicle for addressing this issue than ISTEA. We urge you and the members of your subcommittee to become involved in the RCRA re-authorization process on this issue. We specifically recommend you support a technology-neutral approach to solving the problems of scrap tire disposal based on state developed plans for reaching goals in this area. This approach allows Congress to recognize that CRM can be used in a number of applications such as bases, lightweight fills, retaining walls, shoulder stabilization as well as a fuel in producing other construction materials used in building highways. In addition there may be uses outside of the highway construction field. We believe this approach focuses on the real issue of recycling scrap tires without favoring any specific interest. If this issue is not resolved as part of the RCRA re-authorization, we recommend section 1038 of ISTEA be amended to allow for these recommendations to be applied for ISTEA implementation.

We should allow the ingenuity and inventiveness of the marketplace to help reach the goal of recycling scrap tires rather than imposing legislative solutions.

Future Federal Role in Transportation Infrastructure

NSA strongly supports a continuing federal role in meeting our nation's surface transportation infrastructure needs. The Intermodal Surface Transportation Efficiency Act--ISTEA--should provide the basic framework for meeting the federal

responsibilities in this field and the National Highway System proposed in ISTEA should be the top federal priority within that structure.

Some thirty-five years after its inception, the National System of Interstate and Defense Highways is about to be declared complete. In one sense this statement is true. The construction of over 44,000 miles of highway will be finished and one of the greatest public works undertakings in history will have been accomplished. All those who worked on this enterprise deserve our thanks and admiration. However, the interstate system's mission in meeting our nation's mobility needs continues. The new National Highway System will provide the road network for interstate commerce that reflects the global marketplace of the 1990s and beyond.

When President Eisenhower began the system, it was based on his desire to provide the type of mobilization capabilities the Autobahn gave Germany. He recognized the important role the efficient movement of people and goods plays in securing our national well-being. The interstate highway network is the circulatory system that moves much of the life blood of our society and economy. Military defense remains an important aspect of the system's purpose. In the post Cold War era, we should recognize that the defense responsibilities of the interstate system have been expanded to include economic competitiveness as well as military preparedness. Our ability to win future economic conflicts will be significantly affected by the productivity of our transportation network. As Dr. David A. Aschauer (until recently at the Federal Reserve Bank of Chicago and currently Chairman of the Economic Department at Bates College) has pointed out, America's overall productivity grew along with our investment in infrastructure and our relative decline in competitiveness has coincided with our reduced commitment in this area. The construction and substantial completion of the Interstate System has demonstrated in a practical way the positive impact transportation investments have on economic growth, job creation and productivity.

Developing the National Highway System will continue this important federal contribution to building national economic growth and creating new jobs.

Where are we today? The answer is "*stuck in traffic*." The National Council on Public Works Improvement stated it more formally when they noted, "We have worked through the cushion of excess capacity built into the earlier investments without making commensurate investments of our own." For example:

- More than 60 percent of the miles of paved highways in the U.S. need some form of surface rehabilitation. In 1988, the U.S. Department of Transportation classified 43 percent of the interstate system pavement as either fair or poor. Truck operating costs increase by 6.3 cents per mile when road conditions drop from "good" to "fair."

- Americans lose 1.25 billion hours a year in traffic congestion. The Union of Concerned Scientists estimate that two billion gallons of gasoline are wasted each year in traffic tie-ups. Currently, congestion costs the American economy between \$10 billion and \$30 billion per year. This figure could reach \$50 billion a year in 2005 when highway congestion will triple as forecasted by the General Accounting Office.
- Traffic congestion imposes direct costs upon individuals by increasing personal travel time and vehicle operating costs in terms of fuel and motor oil consumption. For example, the California Chamber of Commerce estimated that traffic delays and rough roads costs motorists \$135 per year in lost time and another \$97 in fuel and maintenance costs. The Texas Transportation Institute estimated the 1986 per capita cost of congestion (user cost and additional fuel cost) at \$330 without the added cost of higher insurance premiums associated with more congestion-related accidents, and \$440 per capita including the insurance adjustments.

The Interstate System conceived in the 1950s was a magnificent achievement. Now we need to build an interstate mobility system for the 1990s and beyond. In addition, there is a large backlog of problems from the 1980s that we need to address. Building the national highway network that reflects our changing social, economic and physical arrangements has hardly begun. The suburbanization of the workplace and workforce, the emergence of two income households, the role of mass transit in metropolitan areas, and the need to better link different transportation modes to deal with trends such as the intermodal movement of goods and just in time inventory concepts are only some of the challenges for the interstate mobility system that we need to construct in the 1990s.

The mission of building a national transportation system to support a mobile and productive nation is what inspired President Eisenhower and Congress in 1956 to begin the National System of Interstate and Defense Highways. Today this same mobility mission goes on along with the federal responsibility in meeting it. The challenge of providing an interstate transportation network that fulfills the needs of a dynamic American society and economy endures as we enter the last decade of this century and prepare for the next. The national highway system is the best available tool to our generation in meeting the test of a global economy.

Metropolitan Planning Organizations (MPOs) and Implementing ISTEA

ISTEA provides for an expanded role for MPOs in meeting and managing our surface transportation needs. NSA supports greater local government involvement in the decision making process because frequently it is disputes at the local and metropolitan level that cause the political gridlock that is preventing the building of needed projects.

There is clearly a role for an organization that can balance the social, economic and environmental impact of meeting our transportation requirements. Further, we need a process that is close to the affected communities so that citizen and neighborhood groups can participate in an ongoing way in the development and analysis of options and not just at the end of the process when choices are limited or not even offered. Also there is a need to coordinate the interests and perspectives of different units of local government. As the economic and social aspects of cities, suburbs and ex-urban fringe areas change, there is a need to recognize that there are now very new and different markets for transportation services. Finally, we strongly urge that MPOs have the business users of our transportation system recognized as a formal part of the MPO process through representation on the MPO board in a similar fashion to business representation on local boards dealing with federally funded job training programs. MPOs should also recognize that their area is part of a large network based on state and inter-state mobility needs. There is an enduring role for both state and federal agencies in implementing plans to keep our economy competitive in a global marketplace that relies on the cost-effective movement of people and goods. MPOs should be a part of that process especially in the development of options and mitigating actions, however, MPOs should not have veto power over meeting state-wide and interstate mobility needs.

Summary and Conclusion

Mr. Chairman, NSA specifically recommends:

- Full funding ISTEA for FY 1994 and urges you to work to see that its multi-year commitment to funding our surface transportation needs are kept. To accomplish this mission we pledge our support in working with you and the full committee to restore the 2.5 cents of the federal gasoline tax currently being used for deficit reduction to the Highway Trust Fund. The revenue stream to the Trust Fund must be strengthened if the total funding commitments of \$155 billion for ISTEA are to be met.
- Giving priority to establishing the National Highway System as part of the enduring federal role in meeting our nation's transportation needs.
- Amending the CRM mandates in Section 1038 of ISTEA to focus on the goal of recycling scrap tires while allowing the states and private sector to determine the most cost-effective way to meet these goals.
- Provide for business transportation user involvement in the MPO process.

Thank you for your consideration of our views and I would be happy to answer any questions.

Large stone lowers production cost and improves pavement performance

Lower production cost. That's what the trend towards increased use of large stone asphalt mixtures for road construction means to the aggregates industry. As highway builders use more and more large stone in asphalt mixtures, aggregates producers can expect to spend less time crushing the product for the consumers.

But the benefits do not stop at the point of production. In a project for the National Cooperative Highway Research Program (a program of the Transportation Research Board and the National Research Council), CAR researchers are investigating the comparative merits of large stone mixes as opposed to conventional mixes without large stone, and developing a long-awaited mixture design procedure.

"We've known since the turn of the century that large stone mixes made for stronger roads," Button said. "But patents prevented wide use of such mixes in the infancy of this industry. Therefore, standard mixture design

methods and evaluation procedures were developed around small test specimens which are unsuitable for use with large stone mixes. Now, we're developing a large-stone mix design that makes for durable roads and cuts the cost of aggregates production at the same time."

During the first phase of the study, a team led by Joe Button, a research engineer with the Texas Transportation Institute at Texas A&M, surveyed every state in the nation to see what mix designs are being used.

"When mixture designs are right," Button says, "the large stone mixes seem to make for roads that stand up to heavy truck loads and high tire pressures."

During the next phase of the study, Button and his associates will begin work on developing such mixes.

"Our goal is to develop mixture design and testing procedures for large stone mixes," Button says. "Right now, large stone mixes are often thrown together using a lot of guesswork and it shows in the performance of the resulting roads."



Pavement core samples aid in research.

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More Crushed Stone Solutions

Rutting and Shoving in Asphaltic Concrete Pavements

New Asphalt Mix Design

100 Percent Crushed Aggregates

High Quality Aggregates

U.S. Should Pursue Application of European Paving Technologies



by Wayne Muri, P.E.
Chief Engineer,
Missouri Highway and
Transportation Department

Ed. Note: Late last year, a group of U.S. transportation officials spent a 14-day tour of Europe studying the latest in asphalt paving technology to see if it could be applied in the United States. The six-country tour was sponsored by the Federal Highway Administration (FHWA) and the National Asphalt Pavement Association (NAPA). The author, who was chairman of the 1990 Transportation Research Board Executive Committee, was one of the tour participants.

In the application of European methods to the engineering arena in this country, I believe that the United States would do well to pursue several technical areas through the FHWA, the states, the contractors, and the public. These areas include heavy-duty pavements, rut-testing devices, and porous asphalts.

Heavy-Duty Pavements

Europeans build heavy-duty pavements that are made with a mix called stone mastic asphalt (SMA). SMA pavements were invented in Germany in the mid-1960s under the name of Splitmastix. Like pavements built by the Romans long ago, these pavements are built using a stone-on-stone concept. The aggregate does not swim around in asphalt and sand.

SMA contains discontinuous or gapgraded crushed stone aggregate with approximately 80 percent plus No. 10 material. SMA is not necessarily the large-stone mixture being investigated by many states. The maximum size aggregate used in SMA is about 5/8 inch; 1/2-inch aggregate is common. The mix has a relatively high binder content of 6.5 to 7.5 percent. To achieve stability of the binder and to prevent it from draining off the aggregate, the bitumen is modified with mineral or cellulose fibers or rubber powder.

Using SMA helps stop pavement rutting and increases pavement durability. Thus Europe's heavy-duty pavements are able to handle the high volume of truck traffic and heavier truck weights. Within the United States, the FHWA could promote SMA research by cooperating with the states for field trials. NAPA is another organization that could undertake this research, analyzing the technical data and including European field information.

Rut-Testing Devices

When the Missouri Highway and Transportation Department handles an asphalt-mixture project, field inspectors and central laboratory personnel check the asphalt cement, the aggregate, and the mix itself before it is approved for the road. This practice is common in most states, but not in Europe, where performance is measured instead of materials. It does make sense to test material by the desired performance, as well as for what it is.

To this end, Europeans perform extensive rut testing of asphalt pavements. For example, we visited the Laboratoire Central des Ponts et Chaussées in France, where sophisticated wheel-tracking equipment is used to test for rutting and other pavement fatigue.

Some areas in the United States are moving in this direction. Georgia's Department of Transportation is currently evaluating rut-testing devices, and the FHWA has provided demonstration funds to four states with plans to provide funds to four more for this purpose. In its Indiana laboratory, Elf Asphalt has installed a rut-testing device that is similar to the one in France, but less expensive.

SHRP, too, is evaluating performance-related asphalt test equipment. In the future, FHWA laboratories could be equipped with rut-testing equipment, and FHWA could encourage more state evaluations of rut testing.

With the European community's sensitivity to the public's needs, it is not surprising to find many European pavements made with porous asphalts, because this material contributes to noise reduction. However, porous asphalts also produce better friction and less hydroplaning, characteristics that would be appreciated by the U.S. traveling public.

The porous asphalt used in France and other European countries is similar to the open-graded friction course used in the United States. European porous asphalts are gap-graded mixes with 20 to 25 percent air voids and a maximum 1/2-inch aggregate. Generally, modified binders such as polymers, rubber, or fibers are used to increase durability.

I believe it could benefit the United States to consider using porous asphalts. To move in this direction, I recommend that a study be conducted to relate Europe's use of this material to our use of open-graded friction courses. The states could then undertake experimental porous asphalt pavement projects.

Other technical advantages of Europe's transportation system should be noted. For example, most European countries build pavements to last 40 years, not 20, as is the custom in the United States. Pavements in Europe that we in the United States would describe as relatively good are resurfaced before any extensive pavement deterioration occurs. This decision is based on structural rather than visual factors. Europeans make good pavements better—not poor pavements good.

Another practice that produces better pavements in Europe is the building of adequate subgrades and bases. Pavements are never designed to compensate for a poor base. Bases and subgrades are structurally sound and adequately drained before any asphalt is laid.

These practices are expensive, but the European countries have considered the costs and decided they are worthwhile. When these practices and the resulting pavements are compared with those in the United States, it is clear that the lack of investment actually encourages the deteriorating condition of pavements in this country.

The 14-day trip to study European asphalt pavement technology humbled me: it was a productive but sobering experience. I am now convinced that we can learn lessons from traveling to see how the rest of the world does business.

Our European hosts were gracious and welcoming, demonstrating to us that the European community not only has advanced technology, but also has advanced methods to quickly put the technology into practice.

The time has come to incorporate proven European methods into this country's advances. The U.S. public should not and will not tolerate a situation in which its money is being used for anything but the best possible products, especially those as essential as pavements. □

This article excerpted from "Paving the Way," which appeared in TR News, May-June 1991 issue. Reprinted by permission of Transportation Research Board, National Research Council.

Placement of a 1-1/4" binder course on a test strip located on I-94 outside Milwaukee.

Several different mixes were placed over the 1.5-mile test section, located in a right-hand (truck) lane. This particular mix included 5.7 percent binder, of which 93 percent was asphalt and 7 percent a plastic modifier.

Air voids were 6.85 percent. Photo courtesy of Jim Warren, NAPA.



Stone Mastic Asphalt: A Potential Rutting Solution



by Charlie Pryor, P.E.
NSA Vice President-Engineering

An asphalt mix that gives better durability, better stability, higher resistance to fatigue and aging, better workability, and is less sensitive to poor quality construction practices? Not likely you say. But stone mastic asphalt (SMA) convinced the skeptics in the European asphalt study tour group (see preceding article).

Stone mastic asphalt (a.k.a. Splittmastix asphalt, grit mastic asphalt, stone matrix asphalt) was developed in the 1960s as a surface course to resist the damage being done to German roads by studded winter tires. Not only did it resist the wear, it also demonstrated resistance to rutting and shoving.

Even though all European countries but one have outlawed studded tires, SMA continues to be used because of its proven strength and durability. One of the main reasons is that European traffic places heavy demands on pavements. For instance, on the German autobahn system, the average daily traffic is 39,000 vehicles per day, with 20 percent truck traffic and 25,000 lb. allowable single axle loads (31,000 in France).

To see if the technology is applicable to American materials, equipment and procedures, the Federal Highway Administration (FHWA) selected a section of highway near Lansing, Michigan as the demonstra-

tion site to test the feasibility of using SMA in the U.S.

SMA is a gap graded asphalt concrete mix that derives strength from stone to stone contact and stability of the asphalt-aggregate mix by the addition of cellulose fibers. The asphalt is a low penetration grade, modified with cellulose to prevent the asphalt-fine aggregate filler from "draining" off the coarse aggregate during production and construction. Mineral

wool is sometimes used, but very seldom are polymers.

The asphalt content of SMA typically is in the 6.5 to 7.5 percent range. This gives a dust-to-asphalt ratio higher than the 1.2 percent value recommended by the FHWA in their 1988 Technical Advisory on Design of Asphalt Pavements (*Stone Review*, October 1988).

A key element in the success of SMA is high quality coarse aggregate



The steel wheel rollers had to work right up to the paver. At left, the appearance of the compacted mix.



providing stone-to-stone contact, which develops internal friction and resistance to shear. The coarse aggregate is typically 100 percent crushed stone with a top size of 3/4 to 1 1/2 in. The grading is not a large top size in the normal sense. However, 70 to 80 percent of the coarse aggregate, by weight, is retained on the #10 sieve, giving a large percentage of the larger size stone.

The percentage of fine aggregate is noticeably less than U.S. mixes, accounting for approximately 15 percent of the aggregate weight. The value of manufactured sand as the fine fraction of normal asphalt cement is well documented, and the same applies for SMA. Filler material accounts for the remainder.

The surface of the compacted mix appears very similar to normal open-graded or "popcorn" mixes, with a heavy asphalt film on the surface aggregate. However, because of the high mastic content and low voids (three percent theoretical), the SMA does not drain vertically.

The low voids content also contributes to protection of underlying pavement layers from moisture-induced distresses as well as to improved durability. German engineers report a 30 percent increase in life.

The rough surface macro-texture apparently gives excellent anti-skid and anti-hydroplaning properties despite the asphalt film on the surface of the exposed aggregate. This film is worn away under normal traffic; however, if increased skid resistance is desired until this is accomplished, a dusting of sand can be rolled into the finished surface.

Europeans use select, high-quality materials in SMA. They are willing to pay the higher costs up front for the longevity obtained. It is estimated that SMA costs up to 30 percent more than conventional mixes, although this might be reduced in the U.S. to 20-25 percent. It is estimated that service life of the pavement is 25 percent longer than one made with conventional materials.

The FHWA demonstration near

Lansing, hosted by the Michigan DOT, was held August 6-7, 1991, and was attended by over 300 people. The project consists of a four-mile section of Route 52, and is divided into sections of SMA, a MDOT standard dense-graded mix and a MDOT rut-resistant mix. Each mix is produced using a batch plant and a drum plant.

European practice is heavily weighted to batch plants, whereas Michigan uses drum plants extensively. The comparison will give a good perspective for U.S. production techniques. The project consisted of milling off 1.5 inches of existing wearing surface and then overlaying with the same amount of the three mixes. The SMA mix data is shown in the chart below.

The aggregate was 100 percent crushed stone from Michigan's Upper Peninsula, shipped over 300 miles to the plant sites near Lansing. The source was chosen to represent, as closely as possible, the stone used in Europe. While it was basically high-quality granite, one fraction had to be re-processed to correct a problem with too many flat and elongated particles.

Cubical particle shape is important to insure the stone-to-stone skeleton for SMA. This is not provided with slabby particles, and as was stated earlier, high quality materials are essential to the success with SMA. Quality control will be essential for contracting teams involved in this

type of paving operation.

At the drum plant, eight cold feeds were used, while four hoppers were used at the batch plant. It is not uncommon for European contractors to use 12 feeds at their batch plants. Because the mix is sensitive to gradation, the drum plant had to pay particular attention to the speed and mixing time. Initially, there was a segregation problem, but that was eliminated by fine-tuning the operation.

The material handled very well using conventional paving equipment. It was found that the temperature of the mix at delivery had to be above 300°F, and the steel wheel rollers needed to work right up to the paver.

The material compacted well, with no shoving. Compaction, as measured by the nuclear density gage, was consistently 98 percent of target, achieved within 10 minutes.

The paving speed was 10 to 15 feet per minute, being governed by the rollers and compaction. The contractor used a tapered longitudinal joint (about one foot per inch of thickness) between the lanes and the compaction was excellent. It was almost impossible to distinguish the joint surfaces in a core taken at the site.

SMA appears to offer the pavement engineer another tool to combat widespread rutting problems. The Michigan project, along with test sections in Wisconsin and Georgia, should give American engineers valuable insight into SMA's applicability. □

MATERIALS

Aggregate: 100% crushed
(98.9% igneous, 1.1% sandstone)
Asphalt Cement: AC-20
Cellulose Fiber: 0.3%

MIX DATA

Asphalt @ optimum: 6.5%
Field Control Density: 151.1 pcf
SpGr: 2.42
% Air Voids: 3.0
Stability: 1074
Flow: 8.7
VMA: 18.2

GRADATION

% Passing	Job Mix	Range
3/4 in.	100.0	100
1/2 in.	94.1	90-100
3/8 in.	72.9	54-80
No. 4	36.1	30-45
No. 8	24.6	20-30
No. 16	19.2	16-26
No. 30	15.9	13-26
No. 50	13.8	10-22
No. 100	12.3	9-19
No. 200	10.4	8-13

Asphalt-mix Technology Puts Emphasis on Aggregate

Trends in development of non-rutting asphalt pavements provide challenges to aggregate producers to meet demands



By Bob Drake
Editor

European asphalt-paving technology debuted in the United States this summer. Demonstration projects in Wisconsin, Georgia and Michigan gave contractors, highway engineers and aggregate producers a view of changes ahead—if

tests are successful.

Used successfully for years in Europe, Stone Mastic Asphalt (SMA)—also called Split Mastic Asphalt—significantly reduces rutting in surface courses of asphalt pavement.

SMA uses a large proportion of a

one-size, high-quality, coarse, crushed aggregate. In addition, it has a high content (6 to 7 percent) of a high-viscosity asphalt cement, a high proportion of aggregate filler, and about 0.3 percent (by volume) cellulose fibers as a stabilizing additive to provide a thick coating on the aggregate.

A gap-graded aggregate mix with a fairly coarse top size (60 to 70 percent retained on the #4 sieve) provides a strong, stone-on-stone skeleton when properly compacted (Figures 1 and 2). The coarse aggregate is 98 to 100 percent crushed, providing better contacts for transferring loads between stones.

Advantages at a Price

According to the Michigan Department of Transportation (MDOT), the SMA mix, properly placed and compacted, provides:

- good wear resistance;
- improved low-temperature performance;
- improved aging properties;
- improved skid resistance;
- increased service life; and
- a range of pavement applications.

But, these advantages don't come

Pit & Quarry/September 1991



Figure 1—Asphalt cores show the greater proportion of coarse aggregate and stone-on-stone contact of SMA (left) as compared to a more dense-graded, special MDOT rut-resistant mix called 4C (right).

MDOT went to the extra expense of trucking aggregate several hundred miles—an extra \$30 per ton—to more closely approximate aggregate composition and characteristics found in European pavements. But, how will SMA perform nationally using local sources of aggregate?

"Research is necessary in various areas so that you can evaluate this mix with the aggregate that's in that area," said Charles Pryor, vice president-engineering, National Stone Association, after observing the Michigan demonstration. "You're not going to be around the country shipping in aggregate from 500 miles away like they did for this. You have to use the aggregate you have."

"Performance of any type of mix depends a great deal on the quality of aggregate," said Pryor. "When you have good, high-quality crushed stone where you get particle-to-particle friction, it's going to perform well."

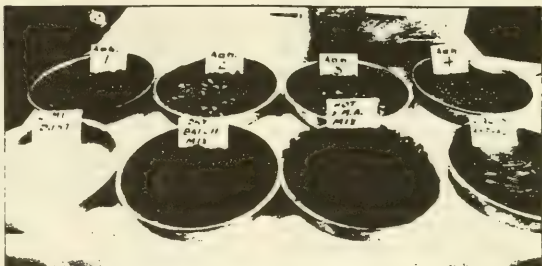
David Jahn, technical services manager, American Aggregates, also wants to see further testing of other types of aggregate.

"We're also sand and gravel producers," Jahn said. "With some of the new equipment in our lab, we would want to try it with 100 percent crushed stone and with a crushed sand and gravel and see what the difference is."

Crushed sand and gravel has crushed faces but also has smooth faces that can reduce friction between particles.

"You can go from sands that are just like ball bearings to the other extreme, where you have stone that is flat and elongated," Pryor said. "Neither of those extremes is what you want in a mix. It's the middle, where you have good angular particles—either natural or crushed—where you get the particle-to-particle friction and the load being transmitted through the stone rather than the glue."

Researchers at the National Center for Asphalt Technology (NCAT) concluded in a 1990 study on rutting for the Pennsylvania DOT that at least 85 percent coarse-aggregate particles (re-



Initial SMA mix design used in the Michigan demonstration project contained four aggregate fractions: 5/8" to 1-2", 1-2" to 3/8", 3/8" to #8, and minus #8. After further tests, the minus #8 fraction was eliminated from the final mix design.

tained on #4 sieve) should have two or more fractured faces. NCAT also recommended using at least 75 percent manufactured sand, 100 percent if possible.

In a separate study, the U.S. Army Corps of Engineers concluded that "all laboratory test results indicated that asphalt concrete mixtures with all crushed aggregate had higher strength properties and would resist potential rutting better than mixtures containing natural sand materials. Asphalt concrete mixtures containing more than 20 percent natural sand appeared to have tremendous potential to deform under severe loads."

Domestic pavement research and imported technology point to greater demands in the future for crushed aggregate. This increased demand plus a move to coarser gradations for surface pavement layers could put a strain on aggregate supplies in some areas. Areas where sand and gravel deposits predominate over stone could be particularly vulnerable to shortages and significantly higher prices.

If SMA were to become widely used, Jahn said there could be shortages of #8 or #89 stone. The problem could be acute where sand and gravel deposits lack sufficient gravel of a size large enough to crush for the coarse fractions and for manufactured sand.

"This continues to place demands

on the entire industry for quality control, quality products and proper application of those to various conditions," Pryor said.

It also demands pit and quarry operators remain aware of the latest research.

"We're very interested in this kind of research and are participating because we want to be in position in the future to be able to supply the aggregates demanded in the marketplace," Jahn said. "The more we learn about research projects, the more that tells us what's coming in the future."

The European

Demonstration projects in the United States using SMA are the result of the European Asphalt Study Tour (EAST) in September 1990. The 14-day tour of Denmark, France, Germany, Italy, Sweden and the United Kingdom by 21 state and federal highway officials, association representatives and asphalt contractors found innovative paving technology that seemed to eliminate many problems plaguing U.S. highways. SMA is one of several innovations observed.

Copies of the EAST report are available for \$5.00 plus \$1.50 postage and handling for single copies from AASHTO, 444 North Capitol Street, NW, Suite 225, Washington, D.C. 20001, phone 202-624-5800. □

Pit & Quarry/September 1991

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

HEARING ON

IMPLEMENTATION OF

THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

APRIL 21, 1993

WASHINGTON, DC

Statement by

Howard Yerusolim, P.E.

Pennsylvania Department of Transportation

1200 Transportation and Safety Building

Harrisburg, Pennsylvania 17120

Mr. Chairman and distinguished members of the Subcommittee, I am Howard Yerusolim, Secretary of Transportation for the Commonwealth of Pennsylvania. I would like to take a moment to recognize the leadership of the Public Works Committee, particularly Chairman Mineta and Representative Bud Shuster, for their hard work and vision in putting together the Intermodal Surface Transportation Efficiency Act (ISTEA). I would also like to thank the other members of the Pennsylvania Delegation, particularly Congressman Clinger, who is a member of this Subcommittee, for their efforts on behalf of the nation's transportation programs.

Promise of ISTEA

With the passage of the ISTEA, Congress has set a bold new direction to develop a transportation system not only for the needs of the 1990s, but also to serve this nation in the 21st Century. New concepts that change the way we do business in transportation have been established, involving all modal interests in the decision-making process. Congress has renewed its commitment to maintain our transportation system as the finest in the world by authorizing record levels of funding for both highways and transit. There has also been a look to the future through a call for innovation in technology and research into new opportunities for Intelligent Vehicle/Highway Systems (IVHS) and Magnetic Levitation Railways (MagLev).

A new focus has been established for the federal highway program based on the concept of a National Highway System (NHS). The NHS, like the Interstate System, provides for unprecedented mobility across America and is vital to the competitiveness and prosperity of this nation. Let us not forget that important work remains ahead next year when the NHS must come before Congress. We ask that you act as quickly as possible to legislatively establish this critical component of ISTEA.

ISTEA promotes a new national priority for intermodalism and greater cooperation among all modes of transportation. It sets forth new flexibility in the use of federal funds; between categories and between transit and highways. ISTEA contains environmentally sound transportation principles. Although this hearing is addressing ISTEA, I cannot cover some aspects of ISTEA without also discussing the Clean Air Act Amendments (CAAA). These two pieces of legislation are very closely linked, especially within the planning process. This linkage is aimed at transportation decisions that can lead to a better quality of life for our generation and generations to come.

A hallmark of ISTEA is the manner in which it builds on the long-standing federal/state/local transportation partnerships. The process is enriched through strengthening of the metropolitan and statewide planning process and through closer cooperation among agencies and modal administrations at the Federal level.

Pennsylvania's Response to ISTEA

Following the passage of ISTEA, both Governor Casey and I praised the work of Congress. We lauded this landmark piece of legislation as visionary and the basis to set the stage for a bright future in Pennsylvania. Pennsylvania has been making good use of the monies it has received from ISTEA. Using ISTEA funds along with state dollars, the Pennsylvania Department of Transportation last summer was able to submit to our State Transportation Commission a recommended update of our Twelve Year Transportation Program for 1992 to 2004 totaling \$29.3 billion. Included are:

- \$17.3 billion for improvements to highways and bridges;
- \$6.6 billion for public transit facilities and equipment;
- \$2.3 billion for airports;
- \$128 million to upgrade railroads and rail freight service; and,
- \$3 billion for intermodal projects. This is a new category in our program in response to the emphasis on intermodalism in ISTEA.

Pennsylvania was able to target some of the new ISTEA money toward \$618 million worth of highway and bridge contract lettings between January and June 1992. We have continued to put extensive effort toward getting projects ready to continue to effectively use all available federal funding. Between July 1,

1992 and June 30, 1993, we are planning to exceed \$1 billion in highway and bridge construction contracts. It is estimated that this level will support 27,500 jobs in highway construction and related industries. Pennsylvania's transit agencies will use all available federal/state/local resources to make a nearly half billion dollar capital investment in the current year, creating 27,000 jobs. With full ISTEA funding, the total capital investment would increase significantly.

Pennsylvania has responded with our own financial support for transportation. The Pennsylvania General Assembly in August 1991 passed new revenue that allows us to match additional federal highway and transit funds. This act is providing \$276 million in additional highway funds annually, and a new dedicated fund for transit purposes is providing \$150 million per year. Since 1987, Pennsylvania has doubled its financial support to transit from \$325 million to \$658 million. These highway and transit investments will put Pennsylvanians back to work, rebuild our infrastructure and provide major economic development opportunities. Governor Casey calls his broader program of capital investment, of which transportation is part, 'Operation Jumpstart'.

Unfulfilled Promises

While Pennsylvania has been working very hard to implement ISTEA, there have been areas where the strong promise we praised

just over one year ago, has not been completely fulfilled. While the increased ISTEA funding has been good for Pennsylvania's economy, 1992 and 1993 appropriation levels have not been at full ISTEA authorized levels. The FFY 93 appropriations bill falls significantly short of authorized levels -- in highways \$18.0 billion versus \$20.5 billion and in transit \$3.8 billion versus \$5.2 billion. Even at full funding levels, there are many unmet needs on our transportation systems. For example, the Southeastern Pennsylvania Transportation Authority (SEPTA) has documented at least \$4.5 billion in backlogged needs in a report on its aging infrastructure for rail and bus systems. This report noted that SEPTA has 441 commuter railroad bridges, 77% of which are over 55 years old; the Market-Frankford Subway Elevated Line traction power system is 59 years old and the cars are 30 years old; surface streetcar maintenance facilities average nearly 80 years of age and bus maintenance shops average over 56 years old. In order to assist the states in meeting the needs of both highways and transit, I would encourage Congress to fully fund ISTEA in future years.

Despite less than full funding, we are managing available resources, using advance construct provisions and other innovative means to construct projects as soon as possible to meet our transportation infrastructure goals.

I applaud President Clinton's Economic Stimulus Package for transportation and the House passage of this measure. This

package would increase appropriations for highways up to the levels authorized by ISTEA. For transit, however, the appropriations would still be significantly below authorized levels.

I am disappointed that the Senate did not take action in a timely manner. Pennsylvania intends to go forward with our program and create jobs this construction season. Pennsylvania is ready to fully utilize any additional available federal funding, even though this year's construction season gets shorter with each passing day.

The Clean Air Dilemma

As I stated before, the ISTEA and CAAA are closely linked. I fully support efforts to protect and enhance the quality of the air we breathe. I also agree that transportation must be part of the solution. Mobility and clean air can be compatible. However, the CAAA funding sanctions are of great concern. Some 35 states have received some type of sanction notice from the Environmental Protection Agency (EPA) on their State Implementation Plan (SIP). All the increased funding and flexibility that ISTEA promises mean nothing if states cannot meet clean air requirements and, therefore, face sanctions in the form of funding cutoffs as a result of the CAAA. Balancing social, mobility, economic, and environmental objectives in our transportation programs is the major challenge of our era.

Under the conformity guidance and ISTEA planning guidance, states and Metropolitan Planning Organizations (MPOs) must undertake comprehensive transportation planning that involves detailed air quality analysis. As has been proposed in regulation, this adds a considerable burden to the transportation agencies to complete the technical evaluation and modeling for major transportation capital investments proposed in transportation improvement programs and long range plans. Flexibility and realism are needed in this process.

Many believe that massive shifts in transportation investment from highways to transit will achieve air quality goals. The experience cited by the San Francisco Bay Area's Metropolitan Transportation Commission (MTC) indicates otherwise. The MTC directed an \$11 billion investment towards high occupancy vehicle (HOV) lanes, transit and local arterial improvements. These investments yielded a reduction of -0.9% in Carbon Monoxide levels and -0.08% in Reactive Organic Gases, a key element of smog. This experience indicates that massive investments such as this only work at the margins of the clean air problem.

Further, many promote Transportation Control Measures (TCMs), things like ride-sharing programs, transit improvements, HOV lanes, park-and-ride facilities, and bike/pedestrian programs, as the answer to air quality. In fact, there is evidence that the impact of traditional TCMs such as these is so small, that it is below the accuracy of our measuring ability.

Phil Lorang, Director of EPA's Emission Planning and Strategies Division, speaking at the Transportation Research Board's Planning Meeting in Seattle on July 19, 1992, said "[EPA] believes that unless states want to adopt some pretty revolutionary travel pricing or rationing schemes, TCMs cannot play a very significant role in most attainment strategies...[so] it is not worthwhile to impose an EPA process for estimating TCM benefits." Unless we are prepared to implement more draconian TCMs such as congestion and parking pricing, vehicle miles of travel taxes, or travel restrictions, TCMs can provide only relatively small increments toward solving the air quality problem.

The dilemma that faces us is that we are forced to spend enormous human energy and financial resources on analysis of transportation strategies that will have minimal effect on clean air. Progress is being made towards improving the air through vehicle emission inspection and maintenance programs, reformulated gasoline, oxygenated fuels and new car tailpipe standards. We are doing our part in working to implement greatly expanded and enhanced inspection and maintenance programs. All this seems to indicate that the largest impacts on air quality lie with cleaner fuels and cleaner cars that are properly inspected and maintained. In fact, we will need to employ a wide range of initiatives to clean up the nation's air, since no single strategy by itself provides the ultimate solution. However, it appears that if cleaner fuels, cleaner cars, and

controlling growth of travel through traditional TCMS do not yield the required reduction in pollutants, it will be very difficult to achieve the clean air standards, and we may be forced to take the more drastic actions, to which I have referred.

Flexibility

The increased funding flexibility of ISTEA is commendable and will eventually improve the efficiency of the transportation investment decisions. Pennsylvania has taken advantage of permitted transfers among funding categories which are critical in advancing ready-to-go projects.

We have used flexibility provisions between highway and transit on a more limited basis. It will take time to move from existing programs and projects, which have already been initiated and are in the planning and development process, to new programs fully developed under ISTEA principles. In Pennsylvania, we have approved and are considering additional uses of flexible funds, particularly Congestion Mitigation and Air Quality (CMAQ) funds, for transit. We have developed a Safety and Mobility Initiative which includes \$21.1 million for park-and-ride lots and other transit-related improvements. We have also approved an additional \$6.1 million for park-and-ride lot expansions as part of our I-95 Intermodal Mobility Project in the Philadelphia area.

We are currently working on a flexible transit related plan which will use some of the obligation authority proposed by President Clinton's Stimulus Package. This plan, to be initiated once the stimulus package is passed, will allocate \$30 million of Congestion Mitigation and Air Quality (CMAQ) funds to transit projects in FFY 93, primarily for rail vehicle and bus purchases. Over the next several years, we are considering at least another \$100 million of flexible funds for transit. This will include funding for the Airport Busway/Wabash High Occupancy Vehicle Facility, an exciting intermodal project in Pittsburgh, and for improvements to SEPTA's transit system in Philadelphia.

While these figures are significant, we must acknowledge that ISTEA has caused intense competition between the modes for available resources. Rather than developing programs which make rational decisions on the use of funds, under-funding has encouraged each mode to battle for survival and to fulfill its perceived promise of ISTEA.

New Requirements

Pennsylvania stands ready to implement the many new requirements of ISTEA. Our concern is that Congressional intent is met as we work through this process. I believe Congress intended to give the states and Metropolitan Planning Organizations (MPOs) a new level of control in developing and implementing transportation programs. Unfortunately, overly

prescriptive regulations and guidance coupled with detailed reporting requirements threaten the intent. For example, we have concern over the prescriptive nature of proposed rulemaking for statewide and metropolitan planning, and the stringent interpretation of "financial constraint" for transportation improvement programs. State and local governments need sufficient flexibility to manage letting programs and account for project slippage or changes in priorities.

ISTEA provides states and MPOs increased latitude on managing certain aspects of the program, however, there has also been a dramatic increase in data requirements and process requirements. It sounded wonderful when ISTEA consolidated many former federal highway funding categories into the five basic categories of Interstate Maintenance, National Highway System, Surface Transportation Program, Bridge, and Congestion Mitigation and Air Quality. However, when you consider the sub-allocations, urban earmarks, and the equity adjustments such as donor state bonus and minimum allocation, these five categories expand into forty subcategories. To illustrate, we have a status of funds report from our PHWA division office that is circulated each month detailing the various categories of highway funding. What was a four page report prior to ISTEA has turned into an eight page report.

New planning requirements for MPOs and states to develop long range plans, to develop Transportation Improvement Programs (TIPs) and State Transportation Improvement Programs (STIPs), to enhance the public participation process and to develop new management systems have the potential to assist in better and more informed decisions. However, it must be recognized that these new requirements greatly increase the workload of both the states and the MPOs. If flexibility at the state and local levels makes good sense, then flexibility must be exercised at the federal level as well. Much data needs to be collected and many reports need to be submitted to the federal government. If the efficiencies envisioned by Congress through ISTEA are to be realized, the potentially onerous reporting requirements must be re-examined.

As an example, Pennsylvania has been a forerunner in the development of pavement and bridge management systems. We have worked for many years to refine these systems into effective decision making tools. The systems we have developed have served as models for others. For the management systems required by ISTEA, it must be realized that every state is at a different development stage for each system. In Pennsylvania, although we believe we have developed effective pavement and bridge management systems, and have most of the components of an effective safety management system in place, we are only beginning to develop the other required management systems for traffic congestion, public transportation facilities and

equipment and the intermodal transportation facilities and systems. The potential benefits to be derived from these management systems may be compromised by overly prescriptive federal guidance and unrealistic time frames.

Many of the ISTEA requirements cannot be achieved through the efforts of the state alone. It is extremely important that we build on our existing federal/state/local partnerships and work in a spirit of collaboration. Pennsylvania has long enjoyed good relationships with our MPOs. This has served us well in the past and continues to do so. The MPOs have responded to ISTEA by bringing representatives of all modes to the table. Because of the high visibility of the strengthened role of the MPOs, other "partners" are also becoming more interested in the process. These include the transportation industry (contractors/consultants), the trucking and rail industries, and environmental interest groups. These new players found the attention of Congress in the development of ISTEA. It is important now that they are integrated into the system in a positive and productive manner.

In Pennsylvania, we have been progressive in working with our new partners to implement ISTEA. We have established an advisory committee to assist in the development of a transportation enhancements program. This advisory committee consists of many of the same grass roots organizations that influenced the law. The members, such as bicycle advocates and

rails-to-trails organizations, worked together to develop selection criteria and to choose the best 77 enhancement projects from the over 400 candidates submitted for Pennsylvania's initial program. These projects total \$47.2 million, \$32.2 million of which is federal funding equalling 58% of transportation enhancement funding expected to come to Pennsylvania over the life of ISTEA. This group's united efforts will continue throughout the life of ISTEA's enhancement program.

Pennsylvania has taken the initiative to develop and work with new groups like this. We stand behind our initiative to build and nurture these new relationships. The time and effort we have invested in establishing this group and its process is providing us with a better program. This is but one example of the need for time and flexibility in developing such new programs.

I am pleased to report that we are one of five states that have agreed to work with the Surface Transportation Policy Project (STPP) on implementation of ISTEA. The STPP is a network of over 100 interest groups, the vast majority of which are environmental groups, whose goal is to develop national transportation policies that better serve the environmental, social, and economic interests of the nation. In March of this year, we signed a partnership memorandum of understanding with STPP. The issues which we will be focusing on include: the transportation enhancements process, the scenic byways program,

congestion management system development, CMAQ concepts, long range planning - both statewide and metropolitan, and transportation/land use planning. We have invited STPP to be an active participant with us, as we develop new processes and programs.

Conclusions

We have learned many lessons as we have worked through the process to understand and implement ISTEA. I will be the first to admit that there is still much more to learn. At this time, it seems premature to recommend changes to the structure of ISTEA. The major problems are not with the intent and direction of ISTEA, but with the prescribed requirements and deadlines that face us at the state and local levels. I ask that as much flexibility be provided as possible.

I also ask that this flexibility be extended to the CAAA and its critical links with ISTEA. To most effectively implement ISTEA, we must make transportation decisions in harmony with clean air objectives, and we need the federal government to work in concert with the states to allow us the latitude to make those decisions.

I look forward to working with Congress and the U.S. Department of Transportation to ensure that the Congressional intent of ISTEA is met. The true promises of ISTEA will only be

realized if Congress, the federal administration, states, local governments and the many new partners in the process all work together. Through these working relationships, we can all realize the promises of ISTEA.

Thank you for the opportunity to address the Committee on this very important subject, and again I commend you on the passage of ISTEA.

ADDITION TO THE RECORD

COUNCIL ON RECYCLING

93 MAY 19 AM 11:33

*c/o Waste Reduction and Recycling Section
Bureau of Solid & Hazardous Waste Management
Department of Natural Resources
Box 7921
Madison, Wisconsin 53707
608/267-7566*

May 14, 1993

Rep. Nick Rahall
B376 Rayburn
House Office Building
Washington, DC 20515

Attention: Jim Zoia

Subject: Submittal for the Public Record of Congressional Hearings on the Intermodal Surface Transportation Efficiency Act (ISTEA) Requirements

Dear Rep. Rahall:

The Council on Recycling is a body of citizens appointed by Wisconsin Governor Tommy G. Thompson to serve as an adjunct to the Wisconsin Department of Natural Resources and advise the Governor, Legislature, and state agencies on recycling policy. It is the duty of the Council to promote the efficient and prompt implementation of Wisconsin's solid waste reduction, recovery, and recycling programs.

Attached is a copy of a recent letter regarding the requirements of the ISTEA submitted to Secretary Federico Pena of the U.S. Department of Transportation and Administrator Carol Browner of the U.S. Environmental Protection Agency. The letter contains the Council's current position on the use of recycled rubber in asphalt pavement as required by the ISTEA.

It is the Council's understanding that as chair of the House Subcommittee on Surface Transportation, you held public hearings on the ISTEA requirements on April 20 and 21, 1993, and the public record remains open until May 21. The Council respectfully requests that the concerns expressed herein be included in the public record of the hearings.

Thank you for your considerate attention to our concerns.

Sincerely,

 JRB

Robert Reichelt
Chair, Council on Recycling

Attachment

COUNCIL ON RECYCLING

*c/o Waste Reduction and Recycling Section
Bureau of Solid & Hazardous Waste Management
Department of Natural Resources
Box 7921
Madison, Wisconsin 53707
608/267-7566*

May 14, 1993

Federico Pena, Secretary
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Carol Browner, Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Subject: Intermodal Surface Transportation Efficiency Act Requirements for Minimum Utilization of Recycled Rubber in Asphalt Pavement

Dear Secretary Pena and Administrator Browner:

The Council on Recycling is a body of citizens appointed by Wisconsin Governor Tommy G. Thompson to serve as an adjunct to the Wisconsin Department of Natural Resources and advise the Governor, Legislature, and state agencies on recycling policy. It is the duty of the Council to promote the efficient and prompt implementation of Wisconsin's solid waste reduction, recovery, and recycling programs.

Wisconsin has enacted one of the most comprehensive recycling laws in the nation. Beginning January 1, 1995, no person may dispose of a variety of recyclable materials in a Wisconsin solid waste disposal facility or burn the materials without energy recovery in a solid waste treatment facility unless an effective recycling program is in place in the region from which the materials are generated. The list of banned items includes waste tires. The state of Wisconsin has implemented programs to assist in the management of waste tires that are currently generated and those stockpiled from previous use. Management of waste tires includes retreading, recycling, energy recovery, and other beneficial uses.

It came to the Council's attention at its April 19 meeting that the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 requires minimum utilization of recycled rubber in asphalt pavement as a percentage of total asphalt used in state highway projects that receive federal assistance. The ISTEA requires that recycled rubber be derived from whole scrap tires or shredded tire material. The minimum recycled rubber utilization requirement is 5% for 1994, and increases 5% each year up to 20% for 1997 and thereafter. While the purpose of the minimum utilization requirements may be well intentioned, the Council does not feel that the ISTEA requirements appropriately address the waste tire situation in Wisconsin.

USDOT Secretary Pena
USEPA Administrator Browner
May 14, 1993
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Since 1988, Wisconsin has reduced the number of stockpiled waste tires in the state from approximately 20 million to 6 million tires. Current management options are expected to consume the remaining stockpiled tires in Wisconsin within the next two to three years. The Wisconsin Department of Transportation (WDOT) reports that the energy recovery capacity of Wisconsin industries is capable of using all waste tires generated annually in Wisconsin and Minnesota. In addition, WDOT reports that it has had success with beneficial use of tires in road fills and sound berms, both of which are discouraged by the ISTEA requirements.

The Council supports the use of waste tires in beneficial applications that are both cost effective and that do not compromise public safety. However, it is the Council's understanding that current research in Wisconsin shows that the performance of recycled rubber containing asphalt is generally less than or equal to traditional asphalt. Additionally, the WDOT reports that the cost of using recycled rubber containing asphalt is 50% to 100% higher than traditional asphalt. The Council would appreciate receiving from your agency any performance and cost data for northern states which justify the use of recycled rubber in asphalt pavement in Wisconsin.

Section 1038(d)(7) of the ISTEA states that the Secretary of the U.S. Department of Transportation, with the concurrence of the Administrator of the U.S. Environmental Protection Agency, shall reduce the minimum utilization requirement at the request of a state that does not have sufficient quantities of waste tires prior to disposal to meet the minimum utilization requirements. While Wisconsin currently has a supply of waste tires, the Council believes that use of waste tires through retreading, recycling, energy recovery, and other beneficial uses, as well as the cost of processing tires for use in asphalt, are sufficient reasons to request a minimum utilization reduction. Consequently, the Council supports the WDOT's request to reduce the minimum utilization requirement to zero for the state of Wisconsin. The Council continues to support research on cost-effective, beneficial uses of waste tires and other recyclable materials.

Thank you for your attention to this matter.

Sincerely,


JRS

Robert Reichelt
Chair, Council on Recycling

USDOT Secretary Pena
USEPA Administrator Browner
May 14, 1993
Page 3

cc:

Governor Tommy G. Thompson
David Kluesner, Governor's Office
U.S. Rep. Nick Rahall, Chair, Congressional Subcommittee on Surface Transportation
Sen. Robert Cowles, Chair, Wisconsin Senate Environment and Energy Committee
Sen. Charles Chvala, Wisconsin State Senate
Rep. Spencer Black, Chair, Wisconsin Assembly Natural Resources Committee
Rep. Peter Bock, Chair, Wisconsin Assembly Environmental Resources Committee
Charles Thompson, Secretary, WDOT
George Meyer, Secretary, WDNR
Jim St. John, Division Administrator, USDOT Wisconsin Division
Herbert R. Teets, Region Administrator, USDOT Region V
Valdas Adamkus, Region Administrator, USEPA Region V
Council on Recycling Members

IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

(Transit Issues)

TUESDAY, APRIL 27, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m. in room 2167, Rayburn House Office Building, Hon. Nick Joe Rahall, II (chairman of the subcommittee) presiding.

Mr. RAHALL. The subcommittee will come to order.

The Subcommittee on Surface Transportation is meeting today to continue our series of oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. I have an opening statement but, without objection, I would ask that it be submitted to the record at this point, and I will recognize our distinguished full committee Chair, the gentleman from California, Mr. Mineta.

[Mr. Rahall's prepared statement follows.]

STATEMENT OF CHAIRMAN NICK J. RAHALL II

The Subcommittee on Surface Transportation is meeting today to continue our series of oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

Last week, the Subcommittee conducted two days of hearings which focused on the federal highway program, as well as some of the planning requirements of the Act. A number of concerns were raised, primarily relating to the implementation of the Act rather than to its statutory provisions.

However, as I have stated in the past, I do not view ISTEA as being carved in stone, handed down from the Mount. Few, if any laws, should be viewed that way. As the old saying goes, if a cow becomes sacred, it is time to put it out to pasture.

Be that as it may, we are still in the process of observing the initial implementation of ISTEA. While making wholesale changes at this juncture may be premature, if problem areas are identified in the statute, and corrective measures are necessary, I believe they should be given due consideration by this Subcommittee.

This morning, we are honored to have with us Secretary Peña. After his testimony, the remainder of the hearing will focus on the federal transit program.

I look forward to receiving the views of today's witnesses.

The CHAIR. Thank you very much, Mr. Chairman. I want to thank you and Mr. Petri in terms of the leadership of this subcommittee and for your holding these hearings.

Without any question, I am especially delighted to be here this morning to welcome Secretary Peña to this third day of a series of hearings on the implementation of ISTEA. Today, our hearings will

be focusing on the transit portions of what I describe as the innovative and landmark legislation that we passed in 1991 which has now become known as ISTEA.

Although transit programs total only \$31.5 billion of the \$155 billion in transportation funding contained in ISTEA, the bill also contains flexible and transferable funding provisions which could significantly increase transit's share of total funding. In fact, more than 60 percent of highway dollars contained in ISTEA are available for transit purposes under certain conditions. Now these interchangeable funds are a hallmark of this legislation.

However, in fiscal year 1992 and fiscal year 1993, only about \$400 million of the billions of dollars that have been appropriated in interchangeable funds have been used for transit purposes. So I am really interested in hearing the reasons for this seemingly low level of transferred funds.

I am also concerned about the problems that some transit operators are apparently having in gaining access to transportation decisionmaking through their MPOs. When we granted more authority to these planning bodies we intended that they exercise their new powers as inclusively as was reasonably possible. I believe that the more participants, the more information, and the more experience that MPOs bring to decisionmaking as it relates to transportation the more likely they are to generate good transportation decisions, and enhanced MPO process is one way we can make certain that the promise of ISTEA translates into improved mobility across our great country.

So, once again, let me welcome our very fine and outstanding Secretary of Transportation, Federico Peña, and, I shouldn't say old friend, but my friend of longstanding, the acting Administrator of the FTA Bob McManus. I look forward to hearing their testimony as well as that of other witnesses that will be before you.

Mr. Chairman, again, let me thank you for holding these hearings and the leadership you are providing to this subcommittee.

Mr. RAHALL. Thank you, Mr. Chairman. And the Subcommittee Chair wishes to associate himself with your remarks as well.

Before recognizing the gentleman from Wisconsin, I do want to put a word of commendation in here to you, Mr. Secretary, for the excellent work you have done in your first several months in office, and most importantly for your help to this committee in getting the two and a half cent gas tax that was going to deficit reduction put back into the Highway and Mass Transit Accounts. We appreciate very much your support and your successful efforts in that regard.

The Chair will recognize the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. I would ask unanimous consent to submit a statement of my own for the record and also one of the ranking republican Bud Shuster.

I would just like to say, Mr. Secretary, that I, and I know the other members of this subcommittee on our side of the aisle, look forward to working with you and cooperating as best we can to make sure we have a good transportation system here in our country and that we adequately fund the infrastructure investments that we have to make. We are looking for a way to resurrect that portion at least of the President's supplemental bill that ran off the

rails in the Senate. I wish you well as you wrestle with the many problems that you will face over the next few years.

Thank you, Mr. Chairman.

[Mr. Petri's prepared statement follows:]

STATEMENT OF HON. THOMAS E. PETRI

Thank you, Mr. Chairman. I, too, particularly want to welcome Secretary Peña here this morning as he is making his first official appearance before the Subcommittee.

Mr. Secretary, you have assumed the leadership of the Department of Transportation at a critical time when many tough challenges lie ahead. I want to wish you much success at the Department and I look forward to working with you in addressing the many important transportation issues facing us today.

Following the Secretary's testimony, we will turn our attention primarily to transit issues. I know the testimony of the various federal and local transit officials and groups representing transit interests will be of great benefit to the Subcommittee this morning.

I ask unanimous consent that an opening statement from the ranking Republican on the full Committee, Bud Shuster, be included in the record.

Thank you, Mr. Chairman.

Mr. RAHALL. The Chair will recognize the gentleman from Illinois, Mr. Poshard.

Mr. POSHARD. Thank you, Mr. Chairman. I would just like to welcome the Secretary here. We are looking forward to his comments. I would ask unanimous consent to submit an opening statement for the record.

Mr. RAHALL. Without objection.

[Mr. Poshard's prepared statement follows:]

REMARKS OF HON. GLENN POSHARD

Mr. Chairman and members of the subcommittee, I am pleased to be here this morning to hear testimony from the new Secretary of Transportation, Mr. Peña. I am also interested in hearing from those Administrators who are involved in rural transit programs.

The 19th District of Illinois spans an area approximately 220 miles in length, from central Illinois to the southernmost area of the State. This region is primarily rural in nature with many low-income and elderly citizens and a high unemployment rate. Rural transit programs are often the only means by which the citizens of my district can get to medical facilities as well as possible employment areas.

I am also pleased that Secretary Peña has proposed to extend the 2.5-cents per gallon Federal excise tax on gasoline. I support this tax as a means to improve the Nation's highway infrastructure and improve our citizens access to transit systems.

Thank you, Mr. Chairman, for holding this hearing, and I look forward to hearing from all the witnesses.

Mr. RAHALL. The Chair will recognize the gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I will forego an opening statement, Mr. Chairman. But we welcome the Secretary. We are glad to have you and thank you for coming today. Thank you, Mr. Chairman.

Mr. RAHALL. The Chair recognizes the gentleman from Minnesota, Mr. Oberstar, for an opening statement.

Mr. OBERSTAR. No opening statement, Mr. Chairman.

Mr. RAHALL. All right. The Chair recognizes the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. No statement.

Mr. RAHALL. The gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON. Thank you, Mr. Chairman. I don't have a statement at this time.

Mr. RAHALL. The gentleman from Missouri, Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman. I do have a statement I would like to submit for the record.

Mr. Secretary, welcome to the committee. I do want to make a point or two. First, I think the ISTEA legislation is the finest piece of domestic legislation that I have been associated with in my seven terms in the Congress. Our problem, of course, has been with full funding of it. I am a strong advocate of full funding and spending down the Highway Trust Fund. I also want to urge full attention to rural areas and their needs for mass transit also. We have some unique problems in rural America and I hope they will not go overlooked. Thank you, and we look forward to working with you.

Thank you, Mr. Chairman.

[Mr. Emerson's prepared statement follows:]

STATEMENT OF REPRESENTATIVE BILL EMERSON

Mr. Chairman: I would like to thank you and the Ranking Republican for holding these important oversight hearings. Both of you worked very hard for the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and I commend you for following up to see what progress has been made since that time.

ISTEA is the finest piece of domestic legislation that I have had the privilege of working on since I came to Congress. Yet, since this landmark legislation was signed into law, we have had problems with the appropriations process. Simply put, funding for ISTEA has been less than the fully authorized levels. We put together one of the most comprehensive transportation bills ever passed, but we cannot get the needed funds for the states as originally approved in the authorization bill.

For transit funding, FY 1993 appropriation levels were actually below FY 1992 levels. Many needs have gone unmet as a result of less-than-full funding, and this is as true in rural areas as it is elsewhere. When we think of public transit, it is essential to remember that we are speaking about rural transportation as well as urban transportation. Rural residents are only too aware that travel costs take a significantly higher percentage of net disposable income from rural folks than from urban individuals.

A good example of the use of public transit in rural areas can be found in Southern Missouri. The Southern Missouri Transportation Service, Inc. (SMTS) provides services to assist folks in obtaining medical treatment and to assist unemployed individuals from one county in attending classes at regional vocational-technical schools and junior colleges. These are just some of the services that are dependent upon public transportation. As my colleagues are well aware, transportation is the cornerstone of access to the goods, services, training and employment opportunities of our entire society; we should ensure that it is extended to our entire society.

Mr. Chairman, again, I applaud your efforts in looking at how ISTEA has been implemented over the past few years. I am pleased to welcome Secretary Peña to this Subcommittee, and I look forward to hearing from the excellent panel of witnesses who will testify over the next few weeks.

Mr. RAHALL. Thank you.

Mr. Secretary, once again we welcome you to the subcommittee. You are free to proceed as you desire.

TESTIMONY OF HON. FEDERICO PEÑA, SECRETARY OF TRANSPORTATION, U.S. DEPARTMENT OF TRANSPORTATION

Secretary PEÑA. Thank you very much, Mr. Chairman and members of the committee. I want to formally submit my written testimony for the record; I will not read it. Let me simply summarize my overall review of ISTEA. Before I do that, I want to acknowledge the fact that you have already heard from a number of representatives of the Department of Transportation and, as was stated earlier, Bob McManus will get into more details on the transit side. I would like to give a broad overview of what we're doing now

and what our major priorities are and what some of our challenges are in the near future.

I want to start by first thanking you, Mr. Chairman and members of the committee, for your leadership over the last several years in shaping one of the most far-reaching pieces of domestic legislation this country has seen in many years. In talking to the States, to the cities, to the various groups that are very much concerned about transportation, I know they recognize the fact that the Congress provided the leadership years ago and we now have the opportunity to make it work and to implement the vision that was developed in the legislation. That is our responsibility.

Mr. Chairman, let me just briefly say that the priorities with respect to implementing ISTEA are very straightforward. The first is ensuring that we have a safe transportation system.

Second, is promoting close cooperation and partnerships with both State and local Governments, and I will have a little more to say about that later and perhaps respond to this issue again during questioning by members. Having been a mayor for eight years and worked at resolving conflicts between urban and suburban interests, and having served in the legislature where we dealt with rural interests versus urban interests in the area of transportation, I think I bring some sensitivity to the challenge of trying to get all these parties to work together in this new effort which is now required under ISTEA.

Thirdly, is to meet our regulatory and statutory deadlines. Let me say to you, Mr. Chairman and to the other members of this committee, I have made a commitment that we are going to do our very best to issue our regulations on a timely basis. During the month of December last year when I was working on the transition process, one of the first things that came to my attention was the fact that many of the key regulations required to be issued by this Department had not been issued on a timely basis. I am trying to correct that. Back in January and in early February, when I realized that the regulations for the metropolitan planning process had not been issued yet, I said let's get them out. We now have them out. The comment period I think ends the 3rd day of next month. That is an example of my commitment to ensure that we respond to your requirements when it comes to the issuance of regulations, no matter how difficult or controversial they might be.

And the fourth priority is ensuring that the flexible opportunities that exist in ISTEA are fully used by the States and localities.

If we can get those priorities implemented, Mr. Chairman and members of the committee, I think we will go a long way to ensuring that ISTEA is implemented as you had envisioned it during the legislative process.

As I said earlier, Mr. McManus will speak more specifically on transit issues in a while, but let me talk about the overall picture here. First, I see as a very high priority our commitment to investment and infrastructure. I am obviously very disappointed that we were not able to get the short-term stimulus package passed. Hopefully, there will be other iterations of that package which we will see in the next week or so. But we are pleased that at least the President's central budget package has been brought before the Congress in a positive fashion. The point I want to make is this:

if one looks at the stimulus package, which contemplated \$4.1 billion of new investment in transportation infrastructure, in the context that we have followed that up in the 1994 budget with basically the same level of funding and we are projecting that in the out years to 1997, the message that I want to convey here is that our purpose is to have a consistent level of new, higher funding in the area of transportation.

The reason I make that point is during the early debates on the stimulus package, there were some who criticized the stimulus as being short-term in duration and, therefore, not being a wise investment of public dollars. We made the point during the stimulus debate that we were going to follow that up in the 1994 budget and beyond with a consistent level of sustainable investment so that the stimulus monies would in fact not be wasteful. We have done that, in the 1994 budget.

The 1994 budget contemplates overall highway and transit budget increases of about \$12 billion over the 1994-1997 timeframe. This, in our opinion, could mean as much as a quarter million new jobs. For fiscal year 1994, the budget proposes to fully fund the highway program authorized by ISTEA at a level of \$20.5 billion. I can recall that in my earlier testimony before the Senate during my confirmation hearing I said that one of my high priorities would be to try to fully fund ISTEA. We have at least met that objective in the highway portion of ISTEA.

Secondly is the motor fuels tax. Mr. Chairman, you have already addressed that issue. Let me simply summarize it again. It was my feeling that we ought to, first of all, restore the concept of trust to our trust funds, that is, to demonstrate to our taxpayers that we were using their monies for the purposes for which taxes were being levied. So we were successful in proposing that the two and a half cent gas tax be put back into the highway transportation area and that it no longer be used for deficit reduction. And as you stated, Mr. Chairman, two cents will go into the highway account and half a penny will go into the mass transit account.

Let me just talk a bit about that from two perspectives. One, in making that decision, I was informed by a number of people that the division between the two cents and the half cent was reflective of the spirit that was part of the development of the ISTEA legislation. So that was I think the general purpose of making the division between the transit piece and the highway piece. I did that recognizing that we do have in the outyears potential problems in the highway account, particularly in 1997. Because of that, we have recommended language in the legislation which says that in the outyears, 1997 or 1998, if the highway account begins to experience difficulty, we would have the option of borrowing from the transit account, because we project in the transit account there will be substantial surplus.

The reality, Mr. Chairman, is that long before we reach that dilemma, the Congress, obviously, will be in the process of rewriting this legislation or thinking about legislation which follows ISTEA. But in the context in which we have drafted the two and a half cent gas tax, we are avoiding, at least in the short term, the problems we were going to have with the Byrd amendment in 1995.

In addition to that new commitment, Mr. Chairman, this Administration has a new commitment to transit. I will not belabor the point about the previous Administration's perspective about transit; I wish only to say that we are pro-transit. We have recommended \$4.6 billion for the transit program. That is a 50 percent increase over the previous Administration's proposed 1993 budget and an actual 21 percent increase over the enacted level. We strongly believe that investment in transit is good for relieving congestion, supporting air quality, and, of course, fostering energy conservation.

We also believe that transit is important to our rural areas. I came back from a two-day trip to Montana where I was able to talk to a number of people in the rural communities, learning more about the difficulties of inter-city bus traffic, and the concerns that senior citizens have in the rural communities in not having the kind of transit they need. I want members of the committee to know that this will continue to be a very important issue for us.

In addition to transit, we will continue our commitment to safety. As you know, Mr. Chairman and members of the committee, safety is a very high priority for this Department historically and I think the American travelling public relies on the Department to ensure that we have high levels of safety. We are increasing the amount of funds for our safety program in NHTSA by 14 percent. That will help States improve their response to the continuing threat of drunk drivers, and encourage States to enact and to enforce laws to require the use of safety belts and motor cycle helmets. I know these are controversial measures but they are required by ISTEA and my intention is to implement the law. While we are pleased that we have seen an improvement in the number of fatalities on our highways, the fact is that we still have 39,200 people who died in highway crashes last year. We are reminded that vehicle crashes remain the number one cause of death for persons between the ages of 5 and 31 years old and the biggest cause of serious injuries.

The reason I make this point, Mr. Chairman and members of the committee, is because this year, as you know, we are going to be focused on health care reform. I would hope that in addition to thinking about the complications of the health care reform package, that we also remember that in the area of transportation we have the ability to significantly impact the extraordinary cost on our health care system resulting from deaths and injuries on our highways. In 1990, injuries and fatalities from highway crashes cost society more than \$13.9 billion in direct medical costs. The cost in terms of lost productivity was even greater; \$50.6 billion in lost productivity. When you add property damage and other direct expenses, the total cost in 1990 was \$137.5 billion. So in short, Mr. Chairman and members of the committee, effective highway safety programs are not only good economics, they are also good medicine.

The next area that we're going to focus on, Mr. Chairman, is ensuring that the dollars that are available for investment in our transportation infrastructure are invested wisely, ensuring that we have strategic investments of those dollars. We are going to do that by focusing on five particular areas: (1) intermodalism, (2) increased planning, (3) our national highway system, (4) fostering

this concept of flexibility, and (5) trying to focus on environmental issues.

Let me talk about each of those very generally. First is intermodalism. This is a very high priority and I am pleased that the President has nominated a gentleman named Michael Huerta, who is the former head of the port authority in San Francisco, who will be heading our intermodal operation. He will ensure that the discussions among the modes with respect to intermodalism becomes a high priority for the Department of Transportation. We see, as I travel around the country, a renewed interest in intermodalism. The leadership that this committee provided in the ISTEA legislation and the message that you have sent throughout our communities is hitting home. People are now thinking more creatively about how to connect their various modes of transportation. I was in Atlanta last week. For example, Atlanta is putting together an intermodal concept to prepare for the Olympics. The same is being done in Miami in terms of thinking more creatively about how they link their port system to their airport to their transit system downtown to a new rail system. The same is true in places like San Francisco and Oakland. So we are very optimistic about the renewed interest in making intermodalism a reality and not simply a slogan. And I want you to know, Mr. Chairman, that the Department is going to work very hard in making sure that intermodalism becomes a reality.

Secondly is planning and the MPO process. I said in my earlier comments that I understand the difficulties in the MPO process, the potential conflicts there. We believe it is important for the Department to play a constructive and supportive role in providing technical assistance and helping MPOs that do not have the technical ability to address some of the very complicated decisions they have to make. The regulations that we recently published will close for comments on May 3rd. Once those comments are in, we will finalize those regulations and I hope that will then help the MPOs in their process. But, again, I want to emphasize we are behind schedule. This should have been done last year. I am trying to catch up and give the tools that the MPOs need to get the job done. The last thing that any of us would like to have is for those local elected officials come to us in the fall of next year and criticize the Department for not getting those regulations out and not allowing them to do their jobs properly.

Thirdly is the NHS system. I think the committee is aware of the fact that by the end of this month all the States will be submitting their proposed NHS submittals. We will then, as a Department, submit the NHS plan to you by December 1. And, of course, by 1995, the Congress must then act on the finalization of the NHS plan. We are very mindful of the concerns that have been raised by a number of States about additions to the NHS plan. We are going to look at that very carefully as we shape the final NHS submission to you in December.

Next is the question of flexibility. Again, the Surface Transportation Program, STP, gives States greater flexibility in the use of their highway funds. Funded at \$23.9 billion over the six-year ISTEA authorization, these funds can be used for everything but local roads and can also be used for transit capital projects. We

want to continue to educate the States about the flexibility in the STP funding to ensure that they maximize their flexibility there.

And the last area, Mr. Chairman, is the area of the environment. I think ISTEA was very clear about the relationship between the Clean Air Act and transportation planning. We of course have the Congestion Management Air Quality projects that are available under ISTEA. We want to send a message that we want to work in a supportive capacity with States and others to ensure that our transportation investments are also supportive of reduction in air pollution.

Finally, Mr. Chairman, let me talk a little bit about the area of new technology and then conclude and open the session up for questioning. One of our high priorities in the Department of Transportation, in addition to the ones that I have talked about already, is investing in new technology. We believe that the Intelligent Vehicle Highway System gives us an opportunity to do that. We are very excited about the fact that in the 1994 budget we are proposing \$225 million more for Intelligent Vehicles for the next fiscal year. That is a 45 percent increase over the fiscal year 1993 level.

As I have travelled around the country, I am impressed with the interest in Intelligent Vehicle Systems, the creativity that we are seeing among cities and State departments of transportation in this area. I believe that working very closely with the IVHS America organization, our Federal advisory committee, we can make very significant improvements in Intelligent Vehicle Systems. We know that we are behind other European countries, but I think that with our renewed commitment on this technology and things like the GPS technology, we can, over a period of two, three, or four years, quickly catch up to others around the world and, hopefully, surpass them in making our transportation systems more efficient in transporting goods and services and people throughout our country.

In conclusion, Mr. Chairman, let me simply say that I look forward to making ISTEA a reality, to implementing the vision that you and other Members of Congress saw fit to put into the ISTEA legislation. I think this is an outstanding opportunity for the Nation to move forward in a very dramatic fashion. I want you to know that this will be a very high priority of this Secretary of Transportation. As we go through this process, I look forward to working with you and other members of the committee to ensure that we implement it as was originally intended.

Let me end with those comments, Mr. Chairman. I would be happy to answer questions from the committee.

Mr. RAHALL. Thank you very much, Mr. Secretary.

The Chair recognizes the full committee Chairman, Chairman Mineta.

The CHAIR. Thank you very much, Mr. Chairman.

Let me just very quickly applaud you for your efforts to translate the vision of ISTEA into workable and real programs. Especially for me, wearing my local mayor's hat, what I was trying to do in ISTEA was to shift that decisionmaking to local and State Governments through collective arrangements like MPOs. So I am really pleased to hear about your perspectives on this.

However, with State and local Governments being given more flexibility in determining transportation solutions, what efforts are

being taken by the department to be assured that the States are, in fact, fairly and equitably allocating obligational authority among the flexible provisions of the programs such as the enhancements and congestion mitigation and air quality improvement programs?

Secretary PEÑA. Mr. Chairman, generally speaking, at this stage in the implementation of ISTEA, I think most of what the Department has done involves education, conducting seminars, trying to get the MPOs up to speed. There is good and bad news in this area. The good news is that there are areas that have done an outstanding job in quickly grasping the new responsibilities they have and implementing them very effectively. San Francisco, for example, has done a relatively good job in this area. There are other communities, either because of the lack of expertise, the lack of resources, and in some cases, real conflict at the local level, which have not been able to move as expeditiously as other communities.

This is a real challenge for the Department of Transportation. I believe that what we must do is work in a closer relationship with those MPOs and the States, provide them with the technical expertise, and help communities not go through the cost and the delay and the time of reinventing processes that have worked elsewhere. I think to the extent that we can share success stories and models that have worked in other parts of the country with communities that are still struggling to make their MPOs become operational, that I think would be a significant contribution we could make to ensuring that the MPOs are more effective.

The CHAIR. In that process, are you doing any technical assistance to the MPOs?

Secretary PEÑA. As I understand it, Mr. Chairman, we have in the past. In the latter part of last year some technical assistance was provided. It is my conclusion that it has not been at the level that we need to have to ensure that the MPOs across the country are all working effectively. So we are going to have to apply more resources, spend more time throughout the country ensuring that expertise is provided to MPOs.

The CHAIR. Given the fate of the President's economic stimulus package in the other body, what are the steps that are now being taken by the Administration to ensure the success of the President's long-term investment package that provides increased funding for the provisions of ISTEA?

Secretary PEÑA. If I understand the question correctly, one, we still are making the transportation investment piece of the 1994 proposal a reality. We would not want to see any cutbacks in that area. Obviously, we understand we have a budgetary cap issue we have to deal with. We will be working very closely with the appropriate members that deal with that particular problem. But other than the discussions that are ongoing now which might be aimed at reviving part of the stimulus package, I can't comment beyond that.

The CHAIR. Then very quickly let me ask about your statement about intermodalism and how important it is. Will you be asking for funds for the National Commission on Intermodal Transportation and will funds be made available to the Commission in order for that Commission to be able to fulfill its mandate to report to the Congress sometime this year?

Secretary PEÑA. Mr. Chairman, I don't know if we're going to be asking for more funds there. I want Mr. Huerta to look at that. We want to get the appointments there as quickly as possible and then determine what resources we need to make that Commission effective. We do want to make it effective. But I am not prepared today to answer your question specifically. I could get back to you on that at a later date.

The CHAIR. Very well. Thank you very much, Mr. Secretary. Thank you, Mr. Chairman.

Mr. RAHALL. The Chair recognizes the ranking minority member of the full committee, the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman.

Mr. Secretary, I certainly want to compliment you for your testimony. I want you to know that if a scaled down stimulus package is sent up here, this conservative Republican will work very hard to support your proposals for full funding of ISTEA and for the two and a half cents. I think it is very important that we do this. I also don't see how it is going to get done because of the budget caps except through a stimulus package. So I guess we have been in a catch 22 where the package has been too much spending for many; yet, without any package, we are just not going to get to full funding at least in this fiscal year. So I would pledge my support for full funding and the two and half cents, and would urge you, as I am sure you are, to try to get the Administration to come forward with a scaled down package.

Secondly, I was pleased to hear you talk about the National Highway System. I believe that this could well be one of the real legacies of the Clinton Administration. Just as the Eisenhower Administration and the Congress put the Interstate system in place, it will be the Clinton Administration and the Congress that puts the final National Highway System in place. I think that would be a superlative legacy because as we move into the 21st century, the needs are so clear. We still have transportation, ground transportation, highway transportation expanding at a rate of about 3.5 percent a year. The National Highway System, at least as it was preliminarily designed, would carry about 40 percent of all traffic, 75 percent of truck traffic, 80 percent of vacationers. So I think that this, indeed, could be a tremendous legacy for the Administration and for you. And I compliment and congratulate you on your focus on these important issues.

Mr. RAHALL. Thank you, Mr. Shuster.

Mr. Secretary, I have a quick question with regard to the NHS. Last week we heard some good news from your Executive Director Dean Carlson that, despite the fact that some States may be late in getting their networks in by the end of this month, the Federal Highway Administration still expects to submit the routing to Congress by the December 18 deadline this year. Of course, as you know and you mentioned, after that we have two years by which to act upon it here in the Congress. That would mean that we would have to act upon it either in the last session of this Congress or the first session of the 104th Congress. Do you have a preference when you would like see Congress act upon it?

Secretary PEÑA. Mr. Chairman, I have not been asked that question yet. It is obviously a brilliant question. I guess, without doing a lot of thinking about it, my own view is that as quickly as we can finalize this whole program, the better for everyone concerned so that we all know what our marching orders are going to be. I think one of the problems that I have uncovered throughout the country is uncertainty about regulations, direction, et cetera. To the extent that the Department and the Congress can eliminate uncertainty and give people some finality so that they now understand what the program is going to be, I think the better for everyone concerned and obviously will allow us to then begin to implement it as quickly as possible. So that's my preliminary conclusion, at least this morning.

Mr. RAHALL. That we just act as quickly as possible?

Secretary PEÑA. That's correct, Mr. Chairman. By the way, on the December deadline, I made it very clear the other day to the Department that we were going to meet that deadline, and we will.

Mr. RAHALL. That is great news. Thank you.

The gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman.

We are all interested in fully funding ISTEА, but the question comes as to where the money is for it. Using the surplus in the trust fund is clearly one option but there is resistance to that for a variety of reasons. The head of the National Association of Truck Stop Operators is from my State and his organization estimates that 25 percent of the diesel fuel tax is currently not paid in. That would be somewhere between \$3 and \$4 billion that we're losing from our trust fund each year through tax evasion. I've also discussed this with the former head of the IRS and they agree that one of their major problems currently is people not paying the diesel fuel tax that we currently have on the books.

Truck stop operators are interested in this because if you are an honest truck stop operator, it is tough to compete with the fellow down the road who can offer various discounts because he is not paying the 20 cents a gallon Federal diesel tax. So if we could change the way that is collected so that opportunities for non-compliance are reduced, it seems to me that we would do a good day's work and we would take a big step toward shoring up your revenue base and fulfilling the commitment that Congress made in passing ISTEА insofar as spending levels are concerned. In the past, there has been a problem because of agricultural opposition to some changes. I think the rural co-ops now recognize the problem and they are eager to work on changes as well to try to prevent paperwork for their members but improve the chances of compliance.

So I would urge you to set up a task force or get together with your colleagues at the Treasury and try to work this political problem out so that while we're arguing about a BTU tax and about trying to declare emergencies to come up with some money for ISTEА, maybe if we just collected the taxes we already had on the books a little better we could do a good job for the transportation sector of our country. Do you have any comments on that?

Secretary PEÑA. Very generally, Congressman, we are in the process of working very closely with the IRS and of issuing to this body a statement on how we think we can correct those problems.

Mr. PETRI. I hope you give it top priority. Certainly, we would be very eager to work with our colleagues on Ways and Means or anywhere else that a change is required legislatively to help implement that.

Secretary PEÑA. Terrific. Thank you.

Mr. RAHALL. The Chair recognizes the gentleman from the Virgin Islands, Mr. de Lugo.

Mr. DE LUGO. Thank you, Mr. Chairman.

Secretary Peña, I want to commend you on your statement here this morning. You made reference to local jurisdictions that were quick out of the box in taking advantage of the flexibility of ISTEA and are using creativity. I want to say that we are very pleased with the provisions of ISTEA as they apply to the Territories, that we're in there, and, in particular, my own local jurisdiction is one of those that was ready to go. I want to commend your department, your people for working with my local officials to make it possible for us to get the money out there and get the jobs out there and get these projects underway. I wish you good luck.

I agree with the gentleman on the other side who said that this is one of the finest pieces of domestic legislation that we have seen in a long time. Good luck.

Secretary PEÑA. Thank you.

Mr. RAHALL. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. Secretary, we have dealt in kind of general terms on a lot of these issues. I have a specific question about a specific project, and I will understand if you are not prepared to give me specific answers on it today but I would appreciate a follow-up in the future. I would like to bring to your attention a proposal that will be sent to the Department of Transportation in the near future. As you know, ISTEA outlines several high priority corridors on the National Highway System. You were given discretion, in cooperation with the States, to prepare long-range plans and feasibility studies for these corridors, to allow the States to give priority to funding these corridors, and to provide increased funding for segments of the corridors that have been identified for construction. Additionally, as you know, ISTEA authorized discretionary money for you to carry out these feasibility design studies.

A multi-State coalition covering the States of Kentucky, Indiana, Tennessee, Mississippi, Louisiana, Texas and Arkansas, the State the President has some continuing interest in, is putting finishing touches on a proposal requesting a feasibility study on the high priority corridor popularly known as I-69. I would like to encourage the department to proceed with that study and your use of the discretionary funds to do that. And if there should be to your knowledge any involvement thus far, I would be grateful for knowing that or your thoughts on that.

Secretary PEÑA. Congressman, about four weeks ago, I think, I had a visit with a delegation from Arkansas where we talked about a number of issues and I have some background on this general

concept. Beyond that, I won't be able to comment. Obviously, we look forward to getting the proposal.

Mr. HUTCHINSON. Good. One follow-up question. In Arkansas, we have been very concerned about—and my predecessor, John Paul Hammerschmidt who worked so hard on ISTEA and worked so hard for the north-south corridor popularly known as I-49 and we are just going right along on highway 71 and proceeding on that. There is some concern in my State that I-69 and a possible route in southeast Arkansas might some way compete with funding for the north-south I-49. Any assurances you can give me or my State that I-69 won't hinder or hamper the progress on the north-south I-49 corridor would be greatly appreciated also.

Secretary PEÑA. Congressman, we will look into that. Again, I am generally aware of the competition between both corridors but, obviously, am not prepared to comment on it today.

Mr. HUTCHINSON. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

I want to also congratulate the Secretary for his work to date. It has really been outstanding, in a short period of time and very aggressive. I have one or two questions that I have been pursuing through these hearings and I would like to hear, Mr. Secretary, your views.

I am particularly glad to hear that you are addressing mass transit issues because to the elderly, the handicapped, the poor, the students, and those who simply cannot afford an automobile—though we think that is not possible but it is true for many, at least many of the people I represent—the question of mass transit is a major issue, especially when I think about issues of mobility for work. As a former mayor, I applaud the MPO process and I think it is a great move to grant them flexibility. But I am worried that those very people who have a major stake in the decisions that are made by MPOs, are well represented or at least represented to some extent on issues such as reverse commutation, where we get people out of urban core into corporate parks and industrial parks in more suburban areas, so that we don't only rely upon the redevelopment of our cities, but the opportunity of people to flow in transportation networks to where jobs exist. I wonder if you could address that.

Secretary PEÑA. Congressman, I share your concern. I think there are mixed levels of performance throughout the country. I think some of the MPOs are doing a good job of involving broader groups of citizens in their own processes. Even though the MPOs in many cases are made up of locally elected officials who in their own right can argue that they represent a certain constituency, a certain city, a certain part of a metropolitan area, there are some who have gone beyond that and are conducting hearings, public forums so that citizens can participate regardless of whether they are inner-city or suburban workers, whatever. Others are not doing that as well. I want you to know that we believe that the most effective MPO processes are those in which there is broad reach throughout the community to ensure that, as that MPO makes decisions, it truly has heard from the broader constituency.

I have great hope that if you allow citizens to participate in the process, they will come up with the best strategies and the best ideas and certainly ensure that whatever decisions are made by the MPO are going to work. You don't want to come up with a proposal which is not going to be effective because the people you are intending to serve are not going to be responsive to whatever strategy you develop. So my own personal philosophy, my own professional view is that we need to do all that we can to involve as many citizens as possible in this process. I know it makes it more complicated, and it usually takes a little more time; however, I think in the long-run, if you bring in people and have that buy-in during the early stages, you can avoid litigation, you can avoid long-term delays which can affect that whole MPO process.

Mr. MENENDEZ. As you move along in this process on the issue of what I call mobility for work, something I know that Senator Bradley over on the Senate side has an interest in as well, as we develop this seamless network, I hope you look at how we can enhance the commutation opportunities for people, in urban cores or rural areas that have high rates of unemployment. I know from being along the other side of the New York skyline, that the commutation efforts seem to come into our areas to take advantage of what we called the Gold Coast. But for many of our residents who suffer around a 10 percent unemployment rate, to look for other opportunities elsewhere, the commutation efforts aren't that easy. So I would commend that to your attention.

And my last point, if I may, Mr. Chairman, am I to understand that the new rules that you are drafting give priority considerations and directions to MPOs, as it relates to different intermodal processes having a priority within their consideration.

Secretary PEÑA. I was having a little trouble hearing your question, Congressman, but as I understood it, the answer is generally yes. We are trying to encourage and foster this notion of intermodalism and to encourage localities to think more creatively about intermodal connections. I wish we could find another word other than intermodalism. It is a great word but it requires a bit of explanation throughout the community. But I think there are a lot of very creative things happening here. We are receiving a number of proposals from throughout the country on intermodalism, intermodal facilities and intermodal connections, which I think are very good news because of the leadership this body provided in fostering this concept of intermodalism.

Mr. MENENDEZ. I am happy to see that because we had an experience where, I guess there are some committees that are established at the State levels there are rating systems that are used that include these bikeways, pathways, landscaping and whatnot, a system which would have developed a ferry connecting two States that would have moved passengers, provided people opportunities to work, obviously had a tremendous impact upon air quality. That particular system ranked tremendously low. So hopefully your rule-making will help give some direction.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Secretary, in listening to your comments and some comments of colleagues, there has been mention of full funding of ISTEA and the fact that due to caps, full funding cannot be implemented without emergency spending or the stimulus package. Specifically, how do those caps affect the Federal Highway Administration's budget and its relation to ISTEA?

Secretary PEÑA. Generally speaking, Congressman, I believe the way we would be affected is in a proportionate fashion with other departments in making sure we meet those caps. I must say to you that the issue has not been resolved. OMB is in the process of attempting to resolve it. So I will not be able to give you a final answer until that issue is resolved. I want you to know, however, that fully funding ISTEA is a priority of the President's. OMB has been supportive of this goal, and I have been arguing very strongly to reach full funding. So, hopefully, the full funding provisions will not be affected. But we will have to see how this process unfolds.

Mr. COLLINS. In relation to your full funding of the department and its relation to ISTEA, what are those percentages of funding?

Secretary PEÑA. The percentages?

Mr. COLLINS. Funding for ISTEA is what overall percentage of your full budget?

Secretary PEÑA. In the highway piece, it is \$20.5 billion, so that is fully funding the highway piece. On the transit piece, it is about 86 percent. I would have to check on the others. Can I give you the specifics on the other portions, Congressmen? There are some people here with me who obviously have the answers. It is about 86 percent of mass transit, 100 percent of highways, and 85 percent for highway safety.

Mr. COLLINS. Very good. Thank you. Thank you, Mr. Chairman.

Mr. RAHALL. The gentlelady from Virginia, Ms. Byrne.

Ms. BYRNE. Secretary Peña, I first want to comment that I think you are grabbing a very difficult job and running with it, and I appreciate your efforts.

In your comments, I was trying to follow what you said about 1997 being kind of a break point. I assume that is without the Byrd amendment passing on the two and a half cent; is that correct?

Secretary PEÑA. Actually, we would run up against the Byrd amendment in 1995 if we didn't have the two and a half cent gas tax corrected.

Ms. BYRNE. And, again following what I thought I heard you say, you may have to borrow from the Transit Fund to put money into the Road Fund. Does that mean that we're not spending our transit money or that the transit money is such a little moneymaker that we really have more in there than we can possibly use?

Secretary PEÑA. That is a very good question. I think the answer is a combination of factors affecting the transit surplus. One, and I hope not to make a partisan statement here, but generally speaking, since there has not been much encouragement at the Federal level in the area of transit in the past several years, I don't think transit operators have had the orientation as have others in the area of transportation about the future of those programs. So to some extent, because the Federal government had not been supportive of transit, we really have not seen the full extent of the in-

terest in, for example, transit new starts, where localities have come to the Federal Government for assistance because, frankly, there was no money. So we have to factor that in.

Second, some would argue that the obligation limitations have not been raised enough to allow for more transit expenditures to occur. Three, the outlays in the area of transit are much slower than the area of highways. We can spend that money in highways very quickly; transit, it takes a much longer period of time, accounting for some of the accumulation in the surplus.

You factor in all those forces and you end up with a substantial surplus in the transit account now and in the outyears. So what we had suggested was, in the event that in 1997 or 1998 or so the highway account experiences a deficit or begins to have significant problems, we would have the flexibility to borrow from the transit account which would have a significant surplus in that year. However, from a practical perspective, long before we get to that year, this body will have already acted in post-ISTEA legislation to correct and anticipate that problem. But I wanted to at least present an honest budget which, on its face, had a mechanism to account for a potential problem in the outyears.

Ms. BYRNE. And that would be a loan that would be paid back to the transit?

Secretary PEÑA. Yes. It would be a borrowing. And, again, Congressperson, we're talking a bit hypothetically here because I don't think we will ever get to that stage.

Ms. BYRNE. Thank you, Mr. Secretary.

Mr. RAHALL. The gentleman from California, Mr. Kim.

Mr. KIM. Thank you, Mr. Chairman. I do have a couple of questions for the Secretary.

I got this article this morning. It says it looks like you have a \$10 billion shortfall on revenue beyond what you anticipated. My first question is, the two and a half cents set aside to pay for the deficit reduction, by 1995 you will have to extend that to set aside for the highway construction money rather than deficit reduction. Is that because of a \$10 billion shortage, you are trying to inject additional money from that two and half cents to make up the difference?

Secretary PEÑA. I am not sure what the \$10 billion is in reference to, Congressman. We will begin to have Byrd amendment problems in 1995 unless we transfer that two and a half cent gas tax being used for deficit reduction and allocate that into the transportation side, particularly into the highway account. If we do not do that, then I will be required to ratchet down the apportionments to the States pursuant to the Byrd amendment.

Mr. KIM. My next question is, this proposed BTU tax, which is roughly about sixty cents per one million BTU for the petroleum products. Is that part of the BTU tax money we are going to spend on highway construction also, or is that totally separate?

Secretary PEÑA. I believe that is separate. It would go to the general fund.

Mr. KIM. Why is it? Do you think it is fair to use gas tax money on other than highway projects?

Secretary PEÑA. Congressman, it is a difficult question and I think there is room for legitimate debate here. However, the Presi-

dent believes, and I agree with the President in this area, as we look at a tax that could be evenly distributed throughout the country, one that would not affect one region of the country unfairly as opposed to another region, The BTU tax appeared to have that effect as opposed to, for example, a gas tax or another tax which would have had a disproportionate impact on the coal industry, for example. So from that perspective, obviously nobody likes taxes, but the fact is we do have a problem with our budget and our deficit and this was seen as part of the calculation in helping us move forward on our investment strategy for the country, investing in infrastructure, investing in people, which I believe is very important to moving our economy forward while at the same time reducing the deficit in the outyears.

Mr. KIM. Going back to this two and a half cents set aside program. How much revenue can you generate out of this two and a half cent gas tax in 1995?

Secretary PEÑA. I think a penny raises close to \$1 billion per year, Congressman. I am doing this by memory, so we're talking about \$2.5 billion. And we are assuming that the current collection rate would continue over the next three or four or five years. That is something we need to factor in too because we have noticed in the past few years that the rate of generation of the tax has declined a little bit as a reflection of the economy. So we need to calculate that. But it is about \$1 billion per penny.

Mr. KIM. So two cents goes to highway trust fund and half cent goes to mass transit, I understand?

Secretary PEÑA. Correct.

Mr. KIM. Until when, 1997?

Secretary PEÑA. This would continue to 1999.

Mr. KIM. That is two years beyond the ISTEA program then?

Secretary PEÑA. That is correct.

Mr. KIM. How can you do that?

Secretary PEÑA. That's a good question in terms of the technical implications of it. I have been advised that has been the tradition in the Congress and in the Administration to have it go on two years beyond the authorization.

The CHAIR. Would my colleague from California yield on that issue. As you know, the tax portion is in the Ways and Means Committee jurisdiction. But by law, the tax portion is always two years beyond the authorizing period because of the obligational authority that exists, so we don't want the revenue to drop off all of a sudden when you have the construction of some project that may still be beyond the period. You want to make sure that the revenues are going to be there so revenues are always provided by the Ways and Means Committee two years beyond the authorizing period.

Mr. KIM. One more question, if I may, Mr. Chairman. They are talking about \$2.9 billion for part of the stimulus package. Does that money come from the highway trust fund or separate funding?

Secretary PEÑA. It is to come from the trust fund.

Mr. KIM. Why would you even set aside for the stimulus package? You say it is highway trust fund money. Why would you pull this out and put together this package of stimulus plan? I don't understand that.

Secretary PEÑA. Congressman, if I understand the question, part of the problem in the 1993 fiscal year was that we had not fully funded the highway portion of ISTEA. So the stimulus was an effort to fully fund the highway portion of ISTEA. The \$2.9 billion was so that we could say that for the 1993 fiscal year we were fully funding it. And then, of course, we want to continue that effort in 1994 as we have suggested in the budget by fully funding the highway portion of ISTEA. So that was the motivation. I must say that for many weeks I had been hearing from many Members of Congress that they wanted this Administration to do its very best to begin to fully fund ISTEA. I think we responded to that at least as it relates to the highway portion.

Mr. KIM. Thank you.

Mr. RAHALL. The gentleman from Pennsylvania, Mr. Borski.

Mr. BORSKI. Thank you, Mr. Chairman.

Mr. Secretary, welcome. I first of all want to mention the former Federal Transit Administrator was a Philadelphia area gentleman who did a commendable job under very trying circumstances. It is my understanding that there is at least a candidate for the Federal Transit Administrator who also is a Philadelphian who I am sure would do an outstanding job if he were to receive the final consideration of you and the President. I can just tell you he is an outstanding young man who knows transit. As a State legislator, he did a commendable job in helping in transit in Pennsylvania, and I am sure if he were to receive this appointment, he would do an outstanding job. Other than that, we don't want to identify him. [Laughter.]

Secretary PEÑA. Thank you, Congressman.

Mr. BORSKI. Mr. Secretary, as others have spoken today about full funding or increased funding for ISTEA, I want to commend you and the Administration for the increased funding, particularly for transit. I want to commend you for keeping the parity of the half cent tax for transit when the two and a half cent tax is extended in 1995. There are many transit projects that should be done but haven't been for some time. I want to congratulate you on that.

I am concerned, however, when people talk about scaled down versions of the stimulus package and what we may see. I was very discouraged when the President's offer for a compromise gave transit a 44 percent cut. It would be my hope that if there is a stimulus package that we're going to try to push through that it maintains the parity in the spending for transit and we won't be faced with a significant cut. I can just tell you that from the transit operators I spoke with, they can use the money, they can spend it and they can spend it quickly. They do challenge the notion that you can't spend the transit dollars as quickly as highway dollars.

So, again, I would just urge you to continue the outstanding work you have done, and I hope that if there is any stimulus package for transportation it keeps at least as close as we can to full funding for transit.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Massachusetts, Mr. Blute.

Mr. BLUTE. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for coming before the committee. My question is a narrow question. I am from Massachusetts. I represent the city of Worcester. Their regional transit authority has expressed concern over the implementation of the Americans with Disabilities Act because disabled seniors get priority over non-disabled seniors. They have told me that many seniors are refused transport. I am wondering if you believe anything can be done about the non-disabled population in this situation.

Secretary PEÑA. Congressman, I am not aware of that particular situation. Let me look into it and get a response back to you in writing.

[The following was received from Secretary Peña:]

Recognizing that the demand for paratransit service exceeds the availability of such service, the Americans with Disabilities Act of 1990 established strict eligibility criteria to ensure paratransit service for riders with disabilities who, because of their disabilities, are unable to use regular fixed-route transit service. In some cases this has impeded delivery of paratransit services customarily used by senior citizens without disabilities.

The Federal Transit Administration contacted the Central Massachusetts Planning Commission in Worcester concerning public transportation for persons with disabilities and senior citizens. Paratransit service in Worcester prior to enactment of the ADA was operating at capacity. Despite the mandated change in eligibility criteria for paratransit service, only one percent of senior citizens were denied service during the first year following implementation of the ADA requirements. In 1992, service denials rose slightly to 3 per day each for persons with disabilities and senior citizens out of about 200 trips per day. The Worcester Regional Transit Authority (WRTA) is seeking to improve service by increasing its efforts to negotiate pick-up times and improving coordination with social service agencies providing transportation in the Worcester area. These efforts are routinely available for Federal operating assistance under FTA's Section 9 formula grant program.

Mr. BLUTE. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from New York, Mr. Levy.

Mr. LEVY. Thank you, Mr. Chairman.

Good morning, Mr. Secretary. One of the features of ISTEA which is frequently praised, and we have heard some of it this morning, is the flexibility that exists at the local and State level. I am just wondering if at times that feature of ISTEA is not at cross purposes with its goal of creating a seamless national network. I ask the question from the point of view of one who frequently travels through LaGuardia Airport, whose destination is never within walking distance of the airport, and who finds himself trying to fend for himself and wishing that someone years ago had given some thought to intermodality and a seamless network. I am just curious about your comments with respect to that.

Secretary PEÑA. Congressman, I am not aware of the flexibility provision operating at cross purposes to developing the seamless system. My instinct is that it is very supportive of a seamless system and of an intermodal network. Having had the local government experience, I can say that there were many times where we felt that the rigidity of certain programs prevented us from being more creative in how we move people and goods in our communities. And so I would think that the flexibility provision actually supports and fosters intermodality if we are creative at it.

Mr. LEVY. You had mentioned some efforts that were going to be made within your department to further encourage intermodality. I am wondering if you could elaborate on that. And let me mention

to you, in the event you are now aware, that in Hempstead, New York, which is within the congressional district that I represent, we recently opened a transit center, a bus station adjacent to a railroad station, which is a splendid example of what can be done and for the first time a system that makes sense in that part of our community. It was done with Federal involvement and involvement of your department and so I just wanted to mention that. It is working well in its very early days. Might you elaborate a little bit on what is being done to encourage that type of intermodality.

Secretary PEÑA. Yes, Congressman. In spite of the fact that the Office of Intermodalism is a relatively new office in the Department of Transportation, for the past several months, members of the Office of Intermodalism have been traveling throughout the country conducting seminars and workshops for local officials, citizens, State officials, et cetera, educating people about this concept of intermodalism and sharing success stories that we have seen in other parts of the country. So that I think is one effort that we are doing.

More importantly is what we do internally in the Department. And here I will assure that the new director of that office, the Associate Deputy Secretary, will, in fact, have the ability to bring the modes together to ensure that within the Department of Transportation we are acting intermodally and thinking intermodally. If we can do that at the national level, I think that will then permeate the rest of the country, particularly as we travel around the country and provide this information in workshops and seminars.

Mr. LEVY. You may want to add the Hempstead experience to your list of success stories.

Secretary PEÑA. That's another one, yes, sir.

Mr. LEVY. And let me echo what Congressman Shuster said about being supportive of a striped down or more reasonable economic stimulus package and our support and our best wishes to you. I would like to associate myself with what he had said. Thank you.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from California, Mr. Baker.

Mr. BAKER. No questions, Mr. Chairman.

Mr. RAHALL. The gentlelady from Washington, Ms. Dunn.

Ms. DUNN. No questions.

Mr. RAHALL. Any further members desiring recognition on round one?

[No response.]

Mr. RAHALL. If not, Mr. Secretary, I would like to ask a question.

Oh, the gentleman from New Jersey, Mr. Franks, would like to question.

Mr. FRANKS. Mr. Chairman, thank you very much.

Mr. Secretary, Over the course of the last several months the new members of the committee have had an opportunity to look at some of the new equipment that is being put on our Nation's rail lines, most notably on the northeast corridor the new High Speed Train. It has struck a number of us that virtually every one of these new world class pieces of equipment appear to be manufactured outside of this country and we're expending enormous sums of taxpayer dollars to purchase equipment that is not putting

Americans to work in terms of at least the manufacturing of that equipment.

I am wondering if, as we now look at a conversion of our defense industries, whether or not you see an opportunity to perhaps create or work with the private sector to create a market within which American manufacturing can begin to compete for this equipment that is being purchased by the United States Government? And, if you do, do you have any tentative plans in that regard?

Secretary PEÑA. Congressman, let me first say that I share your frustration, particularly when I learned that the Spanish version of the X-2000 was actually invented in the United States 15 or 18 years ago and because we failed to work in a supportive capacity we lost that technology to the Spanish and others.

Two points. One, in my presentation in Dallas to about 800 companies that had been previously involved in defense production, we unveiled the President's new initiative in technology conversion. There are funds available which we will apply to creative partnerships throughout the country to encourage the private sector to begin to develop new technology. One of the areas where I think we have a potential market is in the one you referred to, that is, the production of these transit vehicles.

I have asked the question that given our estimate on the number of these vehicles that we know will be purchased over the next four or five years across the country, whether that in and of itself would be enough supply to encourage a producer to do that. The preliminary answer I have received in talking to some local experts is, no. Believe it or not, that even the volume of anticipated vehicles that we expect to be ordering and producing as a Nation is not of enough quantity to support a major contractor in this country. Now there are one or two that are beginning to invest in this area.

We, obviously, will be delighted to work with them in a supportive role. And if we can find creative ways to encourage all of those transit operators around the country to look more favorably upon an American-made manufacturer, this Secretary is willing to do it. I ride these systems throughout the country, they are Japanese, they are German, they are Italian, but they are not American and I think we're missing an outstanding opportunity here. So I share your frustration and we will do what we can to foster this industry in our own country.

Mr. FRANKS. Mr. Secretary, I am delighted to hear you are sensitive to the issue. I think it is an opportunity for us to work creatively to find a new approach. I look forward to working with you on that.

Mr. Chairman, thank you very much.

Mr. RAHALL. Thank you. The Chair apologizes for overlooking the gentleman from New Jersey, Mr. Franks, on that last round of questioning.

Mr. Secretary, you have been patient with your time. I appreciate it. I just have one final question before we do allow you to proceed. As you know, our good friend and chairman of the appropriations subcommittee, Mr. Carr, has been talking about developing some type of economic criteria for judging transportation demonstration projects advanced by Members of Congress. I don't mean to put you on the hot seat, but in light of the fact that this full

committee is no stranger to these types of projects, I believe we might have had one or two in ISTEA——

[Laughter.]

Mr. RAHALL. I just would like to ask you if you think that it is plausible to develop some type of cost-benefit criteria in considering these types of projects?

Secretary PEÑA. Mr. Chairman, I am not reluctant to answer the question. I think that one can develop at least a base level of criteria that can be minimally applied to certain projects. Obviously, there is always subjective judgment and other factors beyond a base level of criteria, but given the scrutiny that the media and others have placed on some projects, which I think today all of us would look back on say: "that was a mistake, we should not have invested in that particular project," that it is incumbent upon all of us to be a little more thoughtful. And so the extent that we can develop criteria that makes sense that can be used to allow us all to make objective decisions so that all of the competing forces out there can look upon us and say the decisions were made fairly and wisely, I think that is a positive thing to do.

Now we are not going to be able to develop criteria for every possibility. But I think at least developing a base level of criteria would be helpful for everybody.

Mr. RAHALL. I appreciate that response, Mr. Chairman. Thank you.

Chairman Mineta, do you have additional comments?

The CHAIR. Nothing further, Mr. Chairman.

Mr. RAHALL. Mr. Secretary, you have been very patient and we appreciate it. Thank you.

Secretary PEÑA. Thank you, Mr. Chairman and members of the committee. I look forward to working with you in the future.

Mr. RAHALL. Same here.

Our next witness is Mr. Robert H. McManus, the acting administrator, Federal Transit Administration. Mr. McManus, we do have your prepared testimony and, without objection, it will be made a part of the record as if actually read and you may proceed as you desire.

TESTIMONY OF ROBERT H. McMANUS, ACTING ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

Mr. McMANUS. Mr. Chairman, members of the Subcommittee, I am Bob McManus, Acting Administrator of the Federal Transit Administration. I appreciate this opportunity to appear before you today to report on the FTA's implementation of the Intermodal Surface Transportation Efficiency Act, the ISTEA. I have submitted for the record, an extended statement of our activities pursuant to the ISTEA. I would like to highlight some aspects of it and invite any questions the committee may have.

Let me at the outset acknowledge the critical role this Committee played in getting that landmark legislation enacted into law. We very much appreciate your efforts, which not only have given the agency a new name, the Federal Transit Administration, but a new sense of mission as well.

As you know, authorization levels provide an envelope or outer limit within which actual program levels are set in the annual ap-

propriations process. As established in the ISTEA, they provide an opportunity to increase transit program levels through fiscal year 1997, in contrast to the preceding reauthorization act, which essentially provided a nearly straight line extension of the then existing appropriation level.

The Administration's budget request for fiscal year 1994 signifies an intent to realize this potential and to foster the key role the Federal Transit Program plays in transportation policy. At \$4.6 billion, this is an increase of some \$800 million over the current year. Virtually all of the increase is for capital investment for infrastructure, and the planning associated with it. Of the \$4.6 billion, some \$3.6 billion will be for capital investment, which, together with State and local spending, would produce a total estimated investment level of about \$6 billion per year.

By using the FTA's most recent Biennial Report to Congress on Transit Needs and Performance as a reference point, which indicates that \$7.5 billion annually from all sources is needed to improve both the condition and the performance of transit, the total level of capital investment for fiscal year 1994 with local match, over-match, and other current non-Federal spending would be sufficient not just to maintain current physical condition and growth trends, but to further eliminate the backlog of deferred capital investment and be positioned for accommodating some travel demand from foregone highway construction. This would be the result from a total estimated investment level of \$6 billion per year.

The flexibility features of the ISTEA offer further potential for closing the gap to \$7.5 billion. Last year, approximately \$300 million was transferred for transit use from multi-modal programs in the highway title, and \$168 million was transferred during the first two quarters of this fiscal year. As the new planning and flexibility provisions become more fully understood, we expect them to be used more fully.

Turning to planning, with the passage of the ISTEA there has been an integration of national transportation and environmental policy requirements. The trend toward specificity about planning in our program legislation represents a demand by Congress for a consciousness-raising about national environmental goals in the planning and management of our transportation systems. Performance is really what is being sought. The congestion management systems in transportation management areas of over 200,000 population, as an example, are meant to bring about compliance with ozone and carbon monoxide air quality standards in nonattainment areas. Integrating forces have been set in motion to achieve such goals.

The ISTEA requires that the Statewide transportation improvement program conform to the State air quality implementation plans. The Clean Air Act requires that local transportation improvement programs prepared by Metropolitan Planning Organizations conform to the air quality management plans for their respective nonattainment areas. The State implementation plans incorporate the provisions of these plans from each nonattainment area, thus completing the linkage among the State implementation plans, the transportation improvement programs, both State and local, and the air quality management plans. The interfaces signify

the importance to State and local authorities of the three Notices of Proposed Rulemaking of the FHWA and FTA to carry out the ISTEA's directives on metropolitan planning, statewide planning, and the State development of Surface Transportation Management Systems.

With reference to structural changes, unlike the impact of the ISTEA on the programs of the Federal Highway Administration, the bill did not fundamentally alter our basic grant programs. But it did provide a number of important changes that improved the way in which we deliver funds to our grantees under those programs. Under the section 3 capital program, for example, the legislation now allocates funds for the fixed guideway modernization program by statutory formula. As you know, this program apportions funds to cities with older rail systems to maintain, upgrade, and modernize those systems. We now publish these apportionments, along with other formula apportionments, each year in the Federal Register as soon as funds are appropriated by the Congress. Administering the program by formula is something we had sought and we already are seeing its beneficial effects. The covered fixed guideway cities now are able to make longer range financial plans based on a more assured flow of funding under the formula and to combine their separate grant resources for this activity into one grant application.

Our section 18 rural program has an increased authorization funding level in the ISTEA based on a percentage change. We are pleased that our fiscal year 1994 budget request seeks some \$131 million for this program, compared to the 1993 enacted level of \$91 million. The rural program plays a critical role in helping States address the important needs of transportation in non-urbanized areas. The ISTEA further expands the scope of the program by requiring that a specified percentage of the funds allocated to each State be used for intercity bus activities unless the State determines that those needs are already being met. Four States made that determination last year and one has done so this year thus far.

To help grantees take full advantage of the rural public transportation assistance available, we recently revised the program guidance which is now widely available in the States. Further, the agency has cosponsored a series of eight ISTEA workshops for rural and small urban officials since January of this year. Finally, FTA funds a national rural transit assistance program which supports State training and technical assistance on a range of rural transportation issues and which has a national resource center with a toll-free number for technical assistance.

The ISTEA also provides the States with a larger role in allocating funds under our section 8 planning program for urbanized areas and our section 16 program for capital facilities for transportation of the elderly and persons with disabilities. As we expected, this aspect of the ISTEA was easy to implement and we already are seeing benefits in that the States are better able to target funds where needed.

The ISTEA makes only a few adjustments to our section 9 formula program that provides funding to all urbanized areas, and these are largely technical amendments.

The ISTEA reconfigured the delivery system for some of our planning and research programs in section 26 of the act and added an element similar to one in the Federal highway program, ours being called the transit cooperative research program. It is allocated 10 percent of the section 26 resource. This is a transit-industry oriented program administered by an independent oversight and project select committee. It fosters cooperation among transit suppliers, providers, and local Governments. We executed a Memorandum of Understanding with the National Academy of Sciences and the Transit Development Corporation to manage the program, with information dissemination by the American Public Transit Association. The first year saw the launching of 32 projects, and the second annual agenda added 25 more addressing near-term problems of transit operators.

The ISTEA also established a National Transit Institute at Rutgers University to support the training and development needs of the transit industry. Modeled after the National Highway Institute, it has been funded, a director appointed, and an advisory committee established to assure the program is responsive to the needs of the industry. Courses related to Federal requirements are being developed and industry-sponsored programs are being identified and prioritized. A national component of the research and planning program which is allocated 30 percent of the section 26 resource, it is a catalyst for research, development, and deployment of transportation methods and technologies in such areas as accessibility for the disabled, safety, air quality, traffic congestion, and service and operational improvement. In addition, as defense spending declines, an opportunity exists to adapt military technology to meet transit problems.

The other components of the section 26 umbrella are the Metropolitan Planning, State Planning, and Rural Transit Assistance Programs, which are delivered by formulas to the States, with the Metropolitan Planning resource being sub-allocated by them to Metropolitan Planning Organizations.

With respect to specific projects and requirements, the legislation called for a number of multi-year grant agreements, virtually all sharing the same early deadline, which, because it was so soon after the enactment of the bill, we were unable to meet. Federal requirements, especially environmental mandates, must be addressed before we can fund a project. We thus immediately notified the affected cities and are now working with each of them to advance the projects to the stage where they can be considered for funds to proceed to construction. To date, we have entered full funding grant agreements for two projects, awarded full or partial grants for another nine, and are negotiating final agreements for three more.

There were also several requirements for special reports or activities pertaining to bus testing, turnkey procurement demonstrations, a safety report to the Congress on transit, a State safety responsibility for rail systems being imposed, charter services demonstrations, university transportation centers, advanced transportation systems, and electric vehicle research, and a suspended light rail transit system technology project. Appropriate administrative

action was taken in each case to abide by the legislative requirement.

Mr. Chairman, I want to conclude by again emphasizing our appreciation for the Committee's role in creating a new era of surface transportation, one that we at the FTA are proud to be a part of. We look forward to working with you and your staff as we continue to implement the ISTEA. If you have questions, I would be pleased to try to respond to them.

Mr. RAHALL. Thank you very much, Mr. McManus.

You seem pleased with the success of the Rail Modernization Formula Program with regard to long-range planning and financing of these projects. Do you also believe that the formula percentages contained in ISTEA by allocation to rail mod cities accurately track the relative needs?

Mr. MCMANUS. I think that they do. In fact, I think it is a rather ingenious structure that has been worked out in the section 3 program for rail modernization. The percentages do allocate the funds, in my opinion, related to need and, combined with the section 9 program resource—that's our formula resource which allocates a significant amount to the integrated systems of the old rail cities—give them an opportunity to pull together these two resources and considerable flexibility in programming their construction and their improvements over the period of the authorization by being able to count on a resource stream from both sources for several years. I haven't heard complaints about the percentage allocation, Mr. Chairman, but if there were, I think we would have heard more than we have.

Mr. RAHALL. Would you give us a status report on the implementation of the inter-city bus set aside under section 18 of the program, including some specific examples or projects that have been funded with these set aside funds and the number of States that are seeking waivers to these requirements.

Mr. MCMANUS. There are four States that asked for waivers last year, that said that they were providing sufficient inter-city service. As I recall, they were Missouri, Texas, Maryland, and, I believe, West Virginia. This year to date we have had one such certification from the State of Vermont.

The States have, we believe, taken up this charge very well, very conservatively. In the first year, about half of them, as I recall, set aside the required resource in a contingency reserve until they could think it through, they then ultimately spent the money on planning, which we encourage them to do, what the service requirements really might be in the State. Others spent their money for operating assistance to carriers to provide the service. Still others spent the money for capital facilities. I can give you a breakdown for the record. There isn't a lot of information yet; it is a relatively new program, but the reaction to it has been very constructive and also conservative.

Mr. RAHALL. Could you get us that breakdown?

Mr. MCMANUS. I would be glad to do that.

[The following was received from Mr. McManus:]

In fiscal year 1992, many states delayed programming of the funds while evaluating the new intercity bus provision, studying local intercity bus needs, and awaiting final FTA guidance on the eligibility of specific activities. Eight states either did not

obligate fiscal year 1992 funds or withheld the statutory amount (five percent) for later obligation—New Jersey, Delaware, Pennsylvania, Indiana, New Mexico, Oklahoma, Oregon, Utah. Of the funds obligated by FTA for intercity projects, approximately half were included in program reserve for projects not yet identified. Massachusetts, Florida, Puerto Rico, Arizona, Nevada, and Wyoming earmarked at least a portion of their funds for planning projects, accounting for six percent of the total funds obligated for intercity bus.

A delay in programming the fiscal year 1992 funds did not necessarily indicate lack of interest in intercity bus funding. Pennsylvania, New York, and Oregon, for example, already had active State funding programs, but as of the end of the first year had not yet decided how best to use the new Federal funding. Indiana met with private operators throughout the year and studied statewide intercity transportation needs. Vermont and Georgia placed the funds in program reserve, but hired a consultant for a planning study.

Six states programmed the funds for capital assistance, which represented ten percent of the fiscal year 1992 funds obligated for intercity bus. Examples of these projects include purchase of a bus and shelters for a specific route (Kentucky), purchase of lifts and related equipment (Nebraska), and purchase of a vehicle for use by a public transit system in intercity service (Washington). Massachusetts, Michigan, and Kansas also programmed the funds for capital assistance.

Operating assistance accounted for thirty-one percent of the fiscal year 1992 intercity bus obligations in the following states: Maine, Kentucky, Mississippi, Illinois, Minnesota, Wisconsin, Arkansas, Iowa, Kansas, Arizona, North Dakota, South Dakota, Alaska, and Idaho. Some of these states are devising a methodology for allocating funds within the state, while others selected specific routes to support. Kentucky, for example, funded service from Pikeville to Ashland. North Dakota contracted with three bus companies for service in the Souris Basin, and Alaska funded a private operator for service between Skagway and Anchorage. Idaho funded service between Coeur D'Alene and Sand Point.

During fiscal year 1992, Texas, Maryland, and Missouri submitted certifications by the Governor that the intercity bus transportation needs of the state were adequately met. West Virginia obligated funds in program reserve, but subsequently submitted a Governor's certification. Vermont used the fiscal year 1992 funds for planning, but has submitted a Governor's certification for fiscal year 1993.

Pursuant to section 18(i), ten percent of the fiscal year 1993 apportionment must be spent by States on intercity transportation. Obligations during fiscal year 1993 also include some of the 1992 funds for which obligation was delayed. As might be expected, as the States have become more familiar with the requirement, obligations in the first half of fiscal year 1993 show a slightly different pattern from the previous year. Thirteen states have obligated funds to date, of which fifty-three percent is for operating assistance, twenty-four percent for capital assistance, six percent for planning, and only seventeen percent in program reserve. The capital projects include purchase of communications equipment (New Hampshire), passenger amenities (Michigan), intermodal terminal construction (Kentucky), purchase of a van for service expansion (Kansas), and lease of a bus (California). The following States have programmed funds for operating assistance: New Hampshire, Pennsylvania, Kentucky, Michigan, Wisconsin, Kansas, and Idaho. Pennsylvania and Utah funded planning activities.

Mr. RAHALL. Let me ask you about your thoughts on whether the 15 percent is too high of an inter-city set aside for buses in years in which section 18 is not fully funded.

Mr. McMANUS. That is a sticking point, particularly if there is a variation in the budget authority for the program from year to year. If there is an up and down experience while the percentage goes up from 5 to 10 to 15 percent, then there are problems. When it levels off at the 15 percent level, it may well be that that would not be a problem as long as the budget authority for the section 18 program did not decline. But the problem would occur when the percentage was going up under the law and the budget authority was going down. That won't be the case in fiscal year 1994.

Mr. RAHALL. The Chair is going to yield the remainder of his time and such other time as he desires to the Chairman of the full committee, Mr. Mineta.

The CHAIR. Let me just thank the Chairman very much.

Mr. McManus, I just want to thank you for your years of service at UMTA, now FTA. I do hope, as you have indicated, that there is a spirit at FTA in terms of their new objectives. I would like to ask you as to what the Administration's position is regarding the eligibility of funding ancillary facilities such as day care centers at transit stations if they are projected to increase the use of that transit system.

Mr. McMANUS. Daycare facilities?

The CHAIR. And other kinds of ancillary facilities.

Mr. McMANUS. I would have to concede that we have been pretty conservative about allowing the eligibility of those kinds of facilities to be financed for capital purposes under the program up to now. We have provided resources for the design of such facilities in transit structures, but we have not financed the actual construction of them. Some of the reason is that some of the proposals that we have had, and they have not been numerous up to now, really contemplated the implementation of a clearly commercial money-making operation. That always causes problems with a net project cost determination in the program. We also have had the conservative attitude that the fundamental needs of the transit systems were such, and the resources allocated to those fundamental needs were not generous, that we were conserving resources for replacement of facilities for upgrading and maintaining essential transit structures, and for rolling stock.

But I think it is a new day and we have talked about it a bit among ourselves at staff level. I am just telling you at this stage of the game what the policy of the agency has been. It has not been a subject that has been discussed with the new political leadership.

The CHAIR. Would you identify and provide us with some additional details on the status of the 14 new start projects that you highlighted as those on which we have made significant progress.

Mr. McMANUS. We feel that with respect to all of the projects that were individual in the authorizing legislation, we have made a really good faith effort to take into account what the Congress has called for, also what has been provided. There are a number of mandates for action that were expressed but, particularly in the first year of the authorization, there was money provided to finance activity for some but not for all. So we worked with each of them and suggested arrangements, including letters of no prejudice and the use of other resources, formula resources, to bring about the engineering, planning, and development of the environmental work so that the projects could be considered ultimately for construction funds at an appropriate time.

Then we have to confront the requirement to present to the Congress each year the 3(j) Report required for under our law, where the Secretary is required to express an opinion on how that new start money ought to be allocated for the forthcoming fiscal year. We have to find some way to reconcile the situation where the ISTEA in total has included projects with an estimated cost of some \$6 billion and yet the law only provides an authorization of \$5 billion. This means that some projects will have to look for other sources of funds or over match or aggressively use the flexibility provisions in the law.

It is not a hopeless situation but it does call for a lot of collaboration with local authorities and a lot of education about what resources might be used.

The CHAIR. On the last point Bob, the previous Administration did not release any funds as it relates to contingent commitments. Is there any possibility that we would be able to bridge the gap you were talking about through release of funds under the contingency commitments?

Mr. MCMANUS. That is the other feature of the law that is an option. We had thought that it would be exercised toward the end of the authorization period, though, rather than at the beginning.

The CHAIR. Because it gives you greater flexibility to exercise that toward the end of the fiscal year?

Mr. MCMANUS. No, because there is a larger balance of unused authorization for new starts at this time. The law says we may enter into grant agreements up to the limit either of the remaining balance in the authorization or 50 percent of the uncommitted cash balance of the fund. So we are not at the point where we would normally trigger the use of that contingent authority.

The CHAIR. Let me just very quickly ask about the coordination and the consultation that has been going on between your agency and the EPA under the Clean Air Act. Has that been going pretty smoothly? Are there some problems there, some arm wrestling that goes on regarding fiefdom?

Mr. MCMANUS. I think we have a marvelous relationship. Within our department itself, the collaboration between the Highway Administration and ourselves has been outstanding for years and years and never more than at the present time. Where we find difficulties we get together and meet with the local authorities who may not be getting the message about the spirit of the law.

With respect to the interface with EPA, I have sat in countless meetings with them on the very sticky policy issues associated with trying to integrate transportation policy and environmental policy through operational administrative practices. That is the task that we have in public administration of these laws.

I would just say to you that I think it is going as well as can be expected when you have bureaucracies with sort of single-minded responses to an ideology. I don't know how far to go with this, but in dealing with the environmental community, it is a much more technology-directed bureaucracy that is focused on one way or the other of achieving the realization of air quality standards. The transportation bureaucracy, in my observation, has a much more robust experience of interface with local political authorities in working out alternatives. That is where the tension is.

The CHAIR. Though there be tension, you would not say that the environmental community is, let's say, laying down on the tracks in order to keep things from happening?

Mr. MCMANUS. No. I would not say that.

The CHAIR. Okay. Fine. Thank you very much, Mr. McManus. Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Chairman.

The Chair recognizes the gentlelady from Washington, Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

I am interested in pursuing Mr. Mineta's point, Mr. McManus. I am one who is an enthusiastic backer for full funding of ISTEA and its implementation I think is very important certainly to my part of the country, Washington State. I would like to pick up on what Congressman Mineta was talking about.

I am very interested in the impact of other agencies on the implementation of ISTEA and I am wondering if you might be willing to go into detail more about how you are affected by the wetlands regulations, for example, the ESA, some things that we are battling within our part of the country, from your perspective. How does it affect the implementation?

Mr. McMANUS. To be honest about it, I have not seen that impacting in an operational way yet. It may be happening at a level that I am not engaged in, but in the management of our transit projects, it has not been a major issue.

Ms. DUNN. Not slowing you up in any way?

Mr. McMANUS. No, it has not been.

Ms. DUNN. Let me ask you, Mr. McManus, about flexible funding. Last year in 1992, you stated that you spent about \$300 million for transit projects and about \$168 million transferred during the first two quarters of 1993. What sorts of trends or patterns are you seeing emerging in the type of transit projects that these funds are being applied for?

Mr. McMANUS. Well this year, the split in intended spending of projects by type of investment is that half of the money would go to bus projects, surprising to me, and about 25 percent for modernization of the old rail systems, and 25 percent for new construction. I think last year, the first year of the implementation of this flexibility provision, there was a larger percentage that went for modernization of the old rail systems because of the predominance of transfers for the New York area.

Ms. DUNN. Is there any overwhelming geographical trend that you are seeing for the application for these funds?

Mr. McMANUS. If my recollection is correct, last year there were some 18 States that participated. I would have to answer for the record what the distribution of those States was. I do not think there is any pattern that will persist except that the program that is being used most is the CMAQ program, and that is one that has limitations on use that would generally be directed to larger cities.

Ms. DUNN. Very good. Thank you.

[The following was received from Mr. McManus:]

FY 1993 FLEXIBLE FUNDING TRANSFERS TO TRANSIT PROJECTS
(As of March 31, 1993)

Grantee	Description	Source	Transferred
CA-AC Transit	4 terminals	STP,C	\$ 8,279,180
CA-Bakersfield	C&G fuel facility	CMAQ	1,360,000
CA-CCCTA	Alt. fuel vehicles	STP	660,000
CA-Foothill Tran.	162 std. buses	CMAQ	4,220,000
CA-Golden Gate Br.	Park and ride Lot	CMAQ	400,000
CA-Sacramento	20 buses, equip.	STP,C	6,602,089
CA-San Louis	12 buses, lift	STP,C	708,359
CA-Santa Clara	Fuel tanks, equip.	CMAQ	3,600,000
CA-SFPUC	Muni fixed facility rehab	STP	1,200,000
CA-SCRTD	1 trolley bus	CMAQ	2,740,000
CA-Stockton	Std. size buses	CMAQ	1,780,000
CA-Yolo City	ADA vans; CNG fueling system	STP,C	1,018,950
CT-DOT	Purchase buses	CMAQ	668,010
IA-Waterloo	Purchase buses	N/A	107,996
LA-Shreveport	1 bus, vans	STP	753,645
MA-MBTA	Old Colony Restore	CMAQ	21,040,000
MA-MBTA	Rte. 128 sta. imp.	STP,C	9,032,016
MA-Worcester	Design inter. ctr.	CMAQ	799,920
MD-Baltimore	Parking expansion	CMAQ	5,690,000
MI-Muskegon	1 bus, 3 vans	CMAQ	192,000
MN-Duluth	3 buses, bike rack	CMAQ	344,000
NC-Chapel Hill	Park & ride access	STP	160,000
NM-Trans. Dept.	Renovate depot	STP	400,000
NY-Albany	Capital improve.	CMAQ	2,108,000
NY-Buffalo	3 park & ride lots	CMAQ	492,000
NY-Dutchess Cty	10 demo vehicles	CMAQ	796,400
NY-MTA	Capital improve.	STP,C	50,000,000
NY-Saratoga Cty	Purchase 5 buses	STP	1,048,000
OH-Cincinnati	Park and ride lot	STP	2,758,000
OH-Cleveland	CNG fueling facil.	CMAQ	2,400,000
OH-COTA	Park & ride/plan	STP,C	1,250,000
RI-Demonstration	Earmark FHWA 1107	N/A	3,356,430
TN-Memphis	Passenger terminal	STP	400,000
TX-Ft. Worth	Special earmark	N/A	3,537,600
TX-Ft. Worth	Purchase 12 buses	CMAQ	1,000,000
UT-Salt Lake Cty	Bus, van purchases	CMAQ	2,400,000
VA-Richmond	Alt. fuel project	CMAQ	367,000
VA-Woodbridge	Expand park garage	CMAQ	4,508,000
VI-Public Works	Capital assistance St. Croix/Thomas	STP	5,100,000
VT-DOT	Bus, vans, equip.	STP	2,355,000
WA-Seattle	26 buses;P&R lot	STP,C	10,197,078
WA-VA/C-Tran	8 buses, bike rack	STP,C	1,854,900
WV-Huntington	Intermodal facility	CMAQ	291,246
			167,975,919

FY 1992 Flexible Funding Transfers to Transit Projects

Grantee	Description	Source	Transferred
AL-City of Montgomery	6 24' minibus, 3 paratransit	STP	\$ 501,476
AK-Anchorage	3 paratransit, elec farebox	FAUS	248,388
AZ-City of Tucson	2 40' access alt fuel bus	STP	600,000
AZ-City of Phoenix	16 vans, rehab 37, retrofits	CMAQ	5,700,000
CA-Sacramento RTD	LRT Oxidge plate	STP	1,200,000
CA-San Diego MTDB	45 40' replace buses	STP,C	9,800,000
CA-San Diego CTD	7 replacement buses	CMAQ	1,766,800
CA-Fresno	Purchase 20 transit coaches	CMAQ	2,205,000
CT-Hartford GHTD	Renovate Union Sta Trsp Cntr	STP	61,832
CT-DOT	Purchase buses	CMAQ	3,786,390
CT-DOT	Peck Bridge	CMAQ	14,173,600
DC-WMATA	Purchase 25 replacement buses	CMAQ	4,600,000
GA-Athens DOT	Assist Fund 2 35' buses	STP	394,955
IL-Chicago PACE	200 vans, bus transf facility	CMAQ	3,900,000
IL-Chicago METRA	Build Commuter Rail Station	CMAQ	3,900,000
IL-Chicago CTA	Purch replacemt transit buses	CMAQ	7,000,000
MA-Boston MBTA	Build South Station	CMAQ	27,200,00
MD-Balt. St Rail Admin	New Sta, rehab rail, buy locos	CMAQ	3,300,000
NE-Omaha Met Transit	Finance 7 buses	STP	400,000
NJ-NJ Transit Corp	Signals, replace loco NE Corrd	CMAQ	30,000,000
NJ-NJ Transit Corp	Rehab Rail Station	STP	4,000,000
NY-MTA	Various MTA Improvements	ISH	100,000,001
NY-MTA	Various Capital Improvements	STP,C	50,000,000
OH-Columbus COTA	Purch replacemt transit buses	CMAQ	3,500,000
OH-DOT	22 vans, 12 sedans, facil imprv	STP	1,298,977
OH-Cleveland GCRT	Build passenger access	CMAQ	8,648,000
PA-AL&NTA	Purchase 12 lift equip vehicles	STP	400,000
RI-Demonstration	Special Earmark FHWA 1107	N/A	1,395,568
VA-WP&RTC	5 intercity commuter buses	CMAQ	920,000
VA-HPTDC	2 transp centers 0x0 buses for	CMAQ	2,704,000
VA-Norfolk TTDC	HOV lane use	CMAQ	3,440,000
VA-City of Richmond	Multimodal Transp Center	CMAQ	1,000,000
VT-Burlington CCTA	Improve maintenance facil	STP	190,000
VT-DOT	Purch buses, land, bus garage	STP	200,000
WI-Madison WIDOT	Purch 12 40' replace buses	STP	1,600,000
WI-WIDOT	Purchase buses, vans	CMAQ	2,118,400
WI-MTS	Purchase buses	CMAQ	200,000
			\$302,353,387

Mr. RAHALL. The gentleman from New York, Mr. Nadler, do you have any questions?

Mr. NADLER. No.

Mr. RAHALL. The gentlelady from New York, Ms. Molinari.

Ms. MOLINARI. No questions, Mr. Chairman.

Mr. RAHALL. Okay. Mr. McManus, thank you very much for your time and attendance here this morning.

Mr. McMANUS. Thank you sir.

Mr. RAHALL. The subcommittee will now hear from a panel composed of the following individuals. Mr. Peter E. Stangl, the chairman of the Board of Directors and chief executive officer of the Metropolitan Transportation Authority, New York, New York; Mr. Michael S. Townes, executive director, the Peninsula Transportation District Commission, Hampton, Virginia; Ms. Marlene B. Connor, administrator, Pioneer Valley Transit Authority, Springfield, Massachusetts; and Mr. Tom Walsh, general manager, Tri-County Metropolitan Transportation District of Oregon, Tri-Met, Portland, Oregon. All of those individuals are on behalf of the American Public Transit Association. And Mr. James W. Clarke, conservation chairman, Sierra Club Montgomery County Chapter, Rockville, Maryland, testifying on behalf of the America's Coalition for Transit NOW.

Lady and gentlemen, we welcome you to the subcommittee. We do have copies of your prepared testimony which will be made a part of the record as if actually read at this point and you may proceed as you desire and in whatever order you desire.

TESTIMONY OF PETER E. STANGL, CHAIRMAN OF THE BOARD OF DIRECTORS AND CHIEF EXECUTIVE OFFICER, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK, NY; MICHAEL S. TOWNES, EXECUTIVE DIRECTOR, PENINSULA TRANSPORTATION DISTRICT COMMISSION, HAMPTON, VA; MS. MARLENE B. CONNOR, ADMINISTRATOR, PIONEER VALLEY TRANSIT AUTHORITY, SPRINGFIELD, MA; TOM WALSH, GENERAL MANAGER, TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, PORTLAND, OR; REPRESENTING THE AMERICAN PUBLIC TRANSIT ASSOCIATION, ACCOMPANIED BY BOB BATCHELDER, CHIEF COUNSEL, APTA AND JAMES W. CLARKE, CONSERVATION CHAIRMAN, SIERRA CLUB, MONTGOMERY COUNTY CHAPTER, ROCKVILLE, MD, REPRESENTING THE TRANSIT NOW COALITION

Mr. STANGL. Thank you, Mr. Chairman, and let me say good morning to you, it is still morning, and good morning to Chairman Mineta and two of my friends from New York, Congresswoman Molinari, good to see you, from Staten Island, and Mr. Nadler, of course, from Manhattan and the Brooklyn waterfront.

I am Peter Stangl. I am chairman and chief executive officer of the Metropolitan Transportation Authority in New York and I appreciate the opportunity to talk with you a little bit about ISTEA today.

Let me first give you a little background about the MTA because I think we are the largest and certainly one of the most complex intermodal organizations in the Nation. Yes, we run New York City's 6,000 subway cars and nearly 4,000 buses and we operate

the first and second largest commuter railroads in the country, both the Long Island and the Metro North commuter railroads. We also operate seven toll bridges and two tunnels that carry some 800,000 cars per day and the toll revenues from those facilities help pay an important part of the cost of operating our transit system. We also help finance some urban parking facilities that complement our services. We serve a 13,004,000 square mile service area that covers two States and we carry about one third of all the transit riders in the country, about six million a day, most of whom use a couple of modes. Frankly, without us, the region in New York simply would not work. With that said, let me turn to ISTE A and how it is effecting transit properties in general and the MTA in particular.

We in the transit industry were extremely gratified by the more systematic approach the regional transportation coordination and funding that you and your colleagues created through ISTE A. We certainly appreciated very much the leadership role that Chairman Mineta played on that and that all of you did. We are working hard to make the bold vision that ISTE A envisioned a reality. While we have run into some practical and institutional barriers along the way, we hope we can overcome them and we hope we can assist in developing an improved process.

The first, and frankly the most difficult, barrier to overcome, and it won't come as any surprise to this committee, is the lack of whole funding for ISTE A. The ISTE A promise of over \$5 billion in direct transit funding a year plus the promise of being able to compete for flexible funding gave us hope that the years of dwindling support for transit were over. But the first two years of direct transit funding for ISTE A have fallen far short of authorized levels, only about 70 percent of what could have been provided. And although for the first time a President's fiscal year 1994 budget proposal gives transit a boost, and a good boost, the boost will still only put us at about 85 or 86 percent, I think the Secretary said, of authorized levels while highways would appear to be going over 100 percent of authorized levels. Hardly the level playing field that we fought for. We know that funding is difficult for a whole host of Federal programs right now but we do believe that there are some actions that Congress can take that would provide relief.

We recommend that the committee consider increasing the authority to spend from the Mass Transit Account of the trust fund. There is money there. We can spend it. The proposal described in our written statement would give appropriators the ability to more fully utilize existing trust fund balances for transit. We are certainly not suggesting in any way that general fund support be eliminated. But we do think that using a greater percentage of transit account moneys would help us get closer to fully authorized funding levels.

Since such an arrangement would also draw down transit account balances more quickly, we suggest that the two and one half cent gas tax which is now dedicated to deficit reduction be authorized for deposit into the trust fund after its scheduled expiration. That in itself might not be enough. We will always, I have certainly always supported an increase in the gas tax above and beyond current levels in order to help us meet the responsibilities of the Clean

Air Act and the Americans with Disabilities Act. Whether such a tax is in the cards among the mixed revenue proposals is uncertain, but we certainly hope that it is.

The lack of funding coupled with the national recession has certainly put a strain on State and local resources. It has increased the competition for flexible funding probably to a level that some may have seen but some did not. There is an awful lot of competition. Accordingly, our partners in the planning process, such as the City of New York, and I think you heard from the Mayor the other day, and the other counties we serve are struggling to try and identify local monies. I also want to point out to you that we do not come here from New York looking for you to do it all for us. Our State has recently passed a \$9.5 billion dollar capital investment program that will take us to 1996. So we at the local level in New York are putting our money where our mouth is and where the needs are in our State.

It has become obvious, I think, that after nearly two years of waiting for the State and MPO-driven flexibility process to shake out, we are not making the type of headway that ISTEA envisioned. Nevertheless, some progress has been made. Implementing this bill has involved the development of a whole new set of Federal and State regulations and require the changing of the existing intergovernmental relations. Such change does not come easily and the lack of timely regulatory guidance compounds the problem. The Secretary spoke to that and I am not going to say anymore about it. He is committed to moving it as quickly as he can. I think that is good.

In my own service area, the MTA is a voting member of three MPOs, the largest of which, the New York Metropolitan Transportation Coordinating Council, has three multi-county transportation coordinating committees. It gets a little complicated. Each of these committees has elected to develop different selection criteria to rank the various CMAQ and the STP projects. While at this point the arrangement is working, not without some struggle, as a regional transportation provider, we would prefer to have more definitive Federal guidance to ensure that the programming of flexible funds is accomplished at the regional level.

But we are forging ahead in the first year of ISTEA without real clear direction from DOT about how the process should work. The distribution of flexible CMAQ, the Congestion Mitigation of Air Quality, and the Surface Transportation Program dollars in New York was guided more by a State legislative process really than by the MPO. Albany, which is our State capital, realizing that there was no formal structure in place for adequate MPO distribution, moved to reflect the spirit of ISTEA and its flexible funding provisions. In that process, we received a little over \$73 million in CMAQ funds and almost \$27 million in STP funds. That was pretty good for us but admittedly that was not much of a process that took place. I can tell you that in our next program which I referred to before we will again be getting approximately \$100 million a year out of the flexible fund categories.

As the whole MPO and TCC project nears completion, as we have been working through this a number of MTA projects have scored quite high in some of the important categories. For this year, we

are hoping for both CMAQ and STP funding for a number of projects, including the 63rd Street tunnel connector project in Queens which will provide a new subway link for some 400,000 daily customers on, frankly, what is the most crowded line in our system. We will also be doing some projects on the commuter railroads which was specifically designed towards attracting new customers. So we have gained some experience. We do believe that some of our concerns will go away as the planning process matures. But let me just reiterate a few things that we believe will need your help.

We think it will be important to extend the existing deficit reduction portion of the gas tax and make sure that at least the historical 20 percent share goes to the Mass Transit Account. We think it would be important to increase authorization levels to allow for additional transit funding from the trust fund. We think you should require that the guidance needed to ensure that the planning and the programming processes that support the key themes of ISTEA be treated expeditiously, and, as I said before, the Secretary I think is working hard to get that cleared up. We think it would be useful to require that transit agencies be represented on all MPOs to ensure adequate consideration of all transportation alternatives in the planning process.

Before I turn it over to my colleagues, and we can do that in any order that you like, Mr. Chairman, I want to conclude by saying that I hope you will also look very closely at what we call America's new surface transportation network, the other map as it were. We have worked with many transportation modes to identify and map out the network of urban and rural transit providers, intercity bus and railroads, proposed high speed rail, and the interstate highway system as one single intermodal system. We have shown this map in the recent past to Chairman Mineta and we would like to display the map to you after we have finished speaking and after we have answered your questions. We think it makes a very good case for coordinated transportation planning and funding and it certainly makes a good case for an efficient and effective ISTEA.

If you please, Mr. Chairman, I would like to call on the other members of the panel or, if the protocol is for you to do that, I will do whatever works.

Mr. RAHALL. Thank you very much for your testimony. We will recognize the other members of the panel. But for the purposes of introducing one particular member of the panel, I would like to recognize my colleague and member of our committee, Mr. DeFazio from Oregon.

Mr. DEFazio. Thank you, Mr. Chairman. Mr. Chairman, I would like to bring to the attention of the committee Tom Walsh, the general manager of the Tri-County Metropolitan Transportation District of Oregon, known to us as Tri-Met. As the committee knows, in Oregon we have adopted very ambitious goals toward reducing single occupancy vehicular travel and have undertaken through our comprehensive land use planning process to implement transportation goals including a light rail project in Portland which the committee has very generously authorized under the leadership of the former chair of this subcommittee, Chairman Mineta. The committee, in fact, came to Portland and visited with Tri-Met and rode

on the MATs, which is a great Federal success story. I am looking forward to being able to bring out the new Chairman to the ground-breaking hopefully for our tunnel for the new project and get to ride on the new very exciting low floor cars that we will have here. We are really going to show the country that we can come in with a very cost-effective program with some new technology that meets a whole host of needs with these new low floor cars.

Mr. Walsh is the key to our success and I would like to welcome him here today. It is a long trip, I make it a lot and I know. It is not as much fun as riding on MATs across Portland but we deal with the aviation problems on other committees. With that, Mr. Chairman, I would like to welcome him and thank the Chairman for his indulgence.

Mr. RAHALL. Mr. Walsh, do you want to proceed?

Mr. WALSH. Congressman DeFazio, Mr. Chairman, Chairman Mineta, thank you for the opportunity to appear before you this afternoon. When this committee almost two years ago this week visited Portland for a hearing, we stressed a number of things. It was not only the success that we had with our first light rail line which opened in 1986, but we told the story of what our region has done following under the e(4) withdrawal program of two freeways in the late 1970s of coordinated intermodal surface transportation projects. As we withdrew those two projects, we put in place literally national leading land use policies, we put in place parking caps in our downtown area, we addressed air quality issues, we looked at a range of mobility needs across our community.

One of the things we stressed to the committee on that visit two years ago was the degree of partnership which exists in our region. We have 27 local Governments, 3 counties and 24 cities. We also have a regional planning organization, a major port, the Port of Portland, and our State Department of Transportation. I can say to you without hesitation that the two strongest partners that we at Tri-Met, the Transit Agency, have are the Port of Portland and the Oregon Department of Transportation. And if ever there was an example for real intermodal surface transportation cooperation to be witnessed, I would argue for this committee that it is in the Portland region.

What we learned as we withdrew those two freeway sections in the late 1970s was some \$300 million of withdrawn freeway monies was that we could make investments in a range of other projects. They funded 79 percent of the first leg of our light rail line. They funded numerous arterial improvements. They built literally the spirit of cooperation and partnership that today let us make use of ISTEA.

As the committee drafted the ISTEA Legislation following that visit in the spring of 1991, we were one of seven projects listed as interrelated projects. I am here today to tell you that if it were not for ISTEA and if it were not for that status that focused upon us as in interrelated project, the second leg of that system would not be under way. We will break ground in less than 60 days on an 18 mile extension to the west of downtown Portland, a \$944 million interrelated project. We do so because we paid careful attention to what ISTEA asked for, we followed its requirements rigorously. Bob McManus indicated earlier this morning that two cities have

signed full funding grant agreements under ISTEA. I am pleased and proud to say that Portland was the first of those. I would not pass that point without making mention both of Bob's personal involvement in that and the leadership of Brian Climer, his predecessor as the Administrator of FTA.

The intent of ISTEA was clear and the cooperation that we at the Transit Agency got from FTA following December of 1991's passage of that act was very straightforward. I have never seen in 30 years in the private sector more cooperation in striving for an agreement. Within four months of signing of that act, we have a letter of no prejudice from FTA that let us commence engineering. We had that within 30 days of completion of our final environmental impact work and publishing of a record of decision. Within five and one half months after signing that LOMP, we had executed the first full funding grant agreement. We are today some 70 percent complete with our engineering on that project. We opened competitive proposals this spring on what will be North America's first low floor cars, which Congressman DeFazio has already spoken about. A major tunnel project is part of this project. Three miles of twin tube tunnels under the west hills are now out for bid. Bids will be received from an international group of contractors by the latter part of May and less than 30 days after that we will have ground breaking. All of these are simply testimony to what is possible under FTA when there is both the cooperation that I have commented on within the region and the leadership that we received from FTA.

I would make only two comments as you look forward with ISTEA, things that I think are not shortcomings but maybe deserve some attention.

Chairman Mineta, you asked an earlier question about contingent commitment authority. We, in a most constructive way, struggled with that with FTA, and I mean in a most constructive way, as to what was the intent of the act and what might be its applications. We are completely comfortable with the decision that we arrived at through negotiations with FTA that it was not appropriate on our project to make use of contingent commitment but that is simply because, in my judgement, we were in the first year of that six year act. I think as you review the act and perhaps make amendments to it, it will benefit all of us, including the FTA, if the Congress might spell out more succinctly how you would expect contingent commitment to be used.

Secondly, on multiple year contracts, the issues of cash flow for an agency such as ours are very crucial. What we have found as we turned to capital communities and asked simply for short-term borrowing needs, what are our capabilities to borrow, and may we pledge some portion of the authorization which is given us under ISTEA? The answer very bluntly is "No". For an agency of our size, an almost \$1 billion project is a momentous undertaking. We will find, with the help of our partners, ways to even out through short-term borrowings those cash flows, but a second recommendation that I would respectfully submit to you if you make technical amendments to this legislation is to consider the needs of agencies such as ours, constructing projects with annual needs of some \$200 to \$250 million, what are some short term borrowing authorities

backed by the future commitment and receipt of Federal funds that make it possible for construction to proceed on the most beneficial basis.

Lastly, I want to make a comment on a portion of this project; namely, the utilization of flexible funds. There are two phases to this project; the first, which was committed under a 75 percent Federal section 3, 25 percent local fund sharing, and the second, which will be incorporated by amendment approximately one year from now. It was the original intent in some authorizing legislation that the second phase also be funded on a 75-25. It was the view of the region, based in part on the experience that we had under e(4) funding, that no sooner was the ink dry on ISTEA that we amended our application with FTA and we will fund the second phase of that project not 75-25, 75 percent Federal section 3 and 25 percent local funds, but what we call a one-third, one-third, one-third. That means simply one-third Federal section 3 funds, one-third STP Transfer Funds, a portion from ODOT and a portion from the region, and one-third local funds. It is our view that increasingly in the future those types of innovative financing arrangements that combine not only section 3 new rail starts, but a transfer of STP funds not only will be required but are absolutely appropriate to fund these projects.

I would close simply with a real note of gratitude. We are just tickled pink with the progress that we have been able to make in our region, the way in which we support both land use environmental quality and livability. Were it not for ISTEA, we frankly would not be there. Thank you.

Mr. RAHALL. Thank you, Mr. Walsh.

Who wants to go next? I know we skipped over Mr. Townes and Ms. Connor. Ms. Connor?

Ms. CONNOR. Thank you for the opportunity to address the subcommittee. My name is Marlene Connor and I am the administrator of the Pioneer Valley Transit Authority in Springfield, Massachusetts. The PVTA is the second largest transit authority in Massachusetts. We serve 23 communities with a fleet of 260 vehicles and provide service to over 12 million passengers annually. As all transit providers, we were enthusiastic about the passage of ISTEA and its prospect for increased opportunities for public transit to work together with other modes of public transportation. However, PVTA did have a negative experience with regard to ISTEA implementation in fiscal year 1993. That is why I am here in support of additional oversight of and tactical amendments to the ISTEA legislation.

Let me first explain how the MPO process, Metropolitan Planning Organization process, works in Massachusetts. The process was grandfathered in the ISTEA legislation. The Commonwealth is divided into 13 separate MPO districts. Each of the MPOs outside of Boston has four members. The members include the Secretary of Transportation, the Commissioner of Highways, the Chairman of the Regional Transit Authority, and the Chairman of the Regional Planning Commission. No MPO has formally met in Massachusetts since 1979 with the exception of the Boston MPO which meets regularly and has two additional members. Again, they are also State-wide representatives not local representatives. The 1979 MPO

meeting was in Springfield and the purpose of that meeting was to discuss a single topic that was of difficulty between the State and local interests.

A local advisory entity to each of the Commonwealth MPOs called the Joint Transportation Committee, which has one representative from each community, puts together each region's transportation improvement project, the TIP. The document is then endorsed by the four signatories of the MPO and becomes the official tool of the Government by which funding is identified for projects. ISTEA called for each State to develop one TIP and each region's priorities to be considered and projects prioritized at the local level. This was to be based on locally assessed needs.

In fact, in fiscal year 1993 a Statewide TIP was put together by the Boston MPO with little input from the other MPOs. We had worked hard at the local level, both highway and transit interests, to evaluate objectively our needs and together prioritize the needs that we saw for the use of the flexible funding only to have this effort be ignored at the State level. All the control was exerted by the former Secretary of Transportation and the Mass Highway Commissioner. Funding which could have flexibly funded transit throughout the State, particularly the CMAQ funds, were given to the Boston based MBTA transit projects and the Secretary of Transportation is chairman of the MBTA Board.

Because of the arbitrary determination of the projects selected for the limited funding which was available, a coalition has since formed to try to make ISTEA work within the Commonwealth of Massachusetts, to try to make it work in the spirit in which it was intended and to prevent the same action from occurring in fiscal year 1994. The Massachusetts Association of Regional Transit Authorities and the Massachusetts Association of Regional Planning Commission have joined forces to try to bring Statewide equity to and fulfill the spirit of ISTEA. We have been going from district to district educating all local elected officials and State legislators about ISTEA and about each individual region's public transportation needs, including transit.

In order to correct the process, we see the Massachusetts State legislature as a body which can bring local pressure to bear on the State entities. We feel it is important for people to understand the broad impacts of ISTEA, how it can help communities view transportation as one unit and not separate functions. Education has been our first tool. However, while education is a reasonable means by which we can focus attention, it is not the only solution. As the ISTEA law recognizes, we must work to change the way State transportation officials have operated for many years. The archaic Massachusetts MPO process as it is currently structured is subject to arbitrary decisions which the local areas have little control over.

ISTEA should be amended to require that the Federal Government review each State's MPO structure to ensure that equity exists. MPO should be structured within States so that local members have a controlling interest in their own areas and there should be no conflicts of interest between MPOs in a State. In addition, an appeal process should be created so that if problems do occur there is recourse at the Federal level to assist the MPO districts. It is also equally important to fund the ISTEA program at its fully

authorized level. By reducing what funds are available, it reduces local areas to fighting amongst themselves; larger cities which have the ability to wield power at the State level over smaller communities will do that. An improved intermodal transportation network which includes all forms of transportation from highways to trains to buses is the best way to improve the economic strength and viability of all of our districts. Thank you.

Mr. TOWNES. Chairman Rahall, Congressman Nadler, my name is Michael Townes and I am the executive director of PenTran which serves Hampton and Newport News, Virginia. The passage of ISTEA caused a great deal of excitement among transit operators in the Commonwealth of Virginia. The multi-modal philosophy embodied in ISTEA seemed to provide an opportunity to advance public transit as an important contributor in meeting the transportation needs of the residents of the Commonwealth. Transit providers were anxious to meet the challenge of trying to obtain funding under the new flexible provisions of ISTEA by presenting viable projects on a more level playing field. We also were more anxious to compete for these projects on a regional not a Statewide basis.

During the early implementation of ISTEA, PenTran experienced some success in obtaining flexible funding; but we also faced a major resistance to the concept of multimodalism. This is a situation which has made the anticipated level playing field impossible to obtain. In Virginia, State and local transportation officials, as well as others involved in the implementation of ISTEA, have been slow to learn the new process created by the act. There are many traditional biases that still exist in our State.

Notwithstanding the challenges we face, PenTran has had, as I have mentioned, some success in obtaining flexible funding under the congestion mitigation and air quality provisions of ISTEA.

During the first year of the authorization the two major transit operators in the Hampton Roads region garnered all of the CMAQ funding. Our sister agency, Tidewater Regional Transit which serves Norfolk and surrounding communities, used the CMAQ money for 20 transit coaches to provide express service on newly opened HOV lanes. PenTran purchased four replacement buses and will soon be under construction of two badly needed intermodal transportation centers in the downtowns of the two cities we serve.

The success we experienced did not come easily. Even though there was little guidance from our State DOT, the projects were readily endorsed by the MPO technical committee. Elected representatives were approached and those of Hampton and Newport News strongly supported PenTran's projects. We thought that the programming of these funds at the MPO was now a formality. But when the time came for a vote a debate, which was prompted in part by a letter from a local transit engineer who wanted to pursue intersection signalization projects, ensued over issues of eligibility, modal choice, and the process by which these funds were to be distributed. The issue was decided when a representative from Newport News pointed out that members who were raising objections would in the future have projects which he might not support if they did not recognize that the PenTran projects were his city's priority at that time. So the MPO then voted to approve these projects for CMAQ funding.

There were some hard feelings left over from this debate. In fact, continued efforts to thwart the projects were carried out in later months including the dissemination of an interpretation of the CMAQ revisions which was made by regional FHWA administrator. This interpretation contended that replacement buses were ineligible for funding under CMAQ. Indications of lingering hard feelings persisted in May of 1992 as proposals for the fiscal year 1993 CMAQ funding were presented to the MPO technical committee. The staff of the State DOT and staff of the regional planning body which houses the MPO called a meeting of local transit planners to program the fiscal year 1993 CMAQ funds. This meeting specifically excluded the transit operators, which is in clear violation of ISTEA. As a result, all of the fiscal year 1993 CMAQ money was programmed for signalization and intersection improvement projects.

After the experience of last year, the regional planning agency and jurisdictional representatives determined that a better process was needed to be established for programming projects for flexible funding. A Transportation Improvement Subcommittee was formed to review and prioritize the projects for funding. Projects were prioritized with the highest priority going to projects of regional significance; next highest priority to projects of multi-jurisdictional need; and the lowest priority to single jurisdictional projects. The two transit systems in the region achieved some moderate success because all of our projects were regional or multi-jurisdictional in nature. Funding for these projects include CMAQ funds and national highway system funds. Attempts to program surface transportation program funds were unsuccessful however due to the way the State distributes these funds. In effect, STP funds are included in the allocation formula that the State uses to distribute funds for each jurisdiction within our State. It is by this allocation process that the State DOT circumvents the philosophy of ISTEA.

Clearly the new processes in ISTEA, which my State is ever so slowly conforming with, challenges transit managers to become more involved in regional political processes in order to advance transit projects. Transit operators are, however, at a disadvantage in the regional political arena. For instance, in my regional MPO there are three transit operators including the section 18 operation that serves a nearby rural county. There are also 14 jurisdictions, of which four are urban and the rest are suburban or rural. So in order to get a positive vote on transit issue at the MPO, the transit operators in urban jurisdictions must find support from jurisdictions which traditionally have a heavy road building bias.

Another disadvantage that the transit operators suffer at the MPO and with our local jurisdictions individually is the fact that most highway projects require less dollar for dollar local match when compared to the local match requirement imposed on transit projects. This is true in Virginia because for highway projects the State provides the non-Federal portion but transit match must come from the local jurisdictions. So politically, a local elected official sees greater local gain in terms of Federal dollars coming in when comparing highway projects against transit projects.

These disadvantages cause me a great deal of concern about the future of Federal support for transit because the perception of

many in our industry is that the flexible funding provisions of ISTEA were in a way a challenge to transit to prove that it needs and deserves greater Federal support. Transit needs to be successful in getting flexible money during the present authorization or, if not, that would be seen as an indication that transit indeed did not need or deserve added Federal support and that said support would be reduced with the next authorization.

I think that whether or not this perception is true, the core of this issue and of the frustrations we have been experiencing by all modal managers with regard to ISTEA is that overall funding is not sufficient to meet the legitimate needs. This condition tends to pit mode against mode and, beyond that, it tends to pit need against need and jurisdiction against jurisdiction. This is a situation that could be greatly relieved in the short term by appropriating all the money authorized by ISTEA.

I was encouraged by the fact that the President's budget proposal for fiscal year 1994 includes a significant increase in transit money. But I was also dismayed by the fact that full funding was not proposed for transit. I was also encouraged that the President's proposed budget includes a major increase in formula funding categories in the transit program. But as a small operator, I must note that I was very dismayed that the operating funding proposed is the same as this year's level, which will mean for the twelfth consecutive year annual dollars remaining the same while inflation and cost of doing business grows.

I want to thank you for the opportunity to make these remarks today.

Mr. CLARKE. Mr. Chairman, good morning and thank you for the opportunity to testify as part of this panel. My name is Jim Clarke and I am a Sierra Club volunteer currently serving as conservation chair of the Montgomery County group of the Sierra Club of Maryland. Today I am speaking with the backing of more than half a million Sierra Club members nationwide. We are one of 179 firms and organizations that now are members of America's Coalition For Transit Now. The Sierra Club is pleased to be an active partner in the Transit Now Coalition which includes both business and environmental interests, health care and disability groups, financial institutions, and a broad range of other issues. What brings us together in this coalition is the belief that public transit offers opportunities for improving the economy, increasing the mobility and productivity of the Nation's work force, has a positive impact on the environment and health care costs.

We believe that there are critical transportation alternatives to the automobile. Transit Now has been active in reaching out to those not ordinarily associated with mass transit to energize support for the passage and effective implementation of the Intermodal Service Transportation Efficiency Act, ISTEA, as well as mass transit provisions that were contained in last year's comprehensive energy policy act. A listing of Transit Now members is being provided for the record along with my written statement.

I want to begin by clearly stating why the Sierra Club recognizes the importance of mass transit and supports ISTEA implementation. We view this legislation as one of the most critical pieces of environment legislation passed by the Congress in the last decade,

and certainly the most important piece of transportation legislation since the Urban Mass Transit Act was signed into law more than 25 years ago. The ISTEA also fulfills a major role in the implementation of transportation requirements of the Clean Air Act. The emphasis which ISTEA places on flexibility allowing performance and need to determine transportation funding decisions is a vital concept contained within the legislation. Additionally, increasing involvement of State and local decisionmakers in the transportation funding process is a very positive change.

Sierra Club statewide chapters and regional groups are constantly faced with highway projects that do nothing to improve the air quality and cause massive displacements of people, businesses, and natural resources. The wetland losses alone are staggering and other inverse impacts result as well which is the degradation of a critical habitat and vistas, reduced open space, water quality impacts of run off on the pavement, and so on. ISTEA in its flexible funding provisions for all transportation projects including mass transit has given us an opportunity to positively impact projects which move people and goods but which help to improve environmental conditions. ISTEA allows Metropolitan Planning Organizations, MPOs, to achieve environmental and energy goals. Every dollar that is spent improving the performance and utilization of mass transit is a dollar less that the Government will have to spend to clean our air or repair damaged watersheds due to highway construction.

As you know, transportation consumes approximately 63 percent of the oil used in the United States. The trend in transportation energy consumption shows a continuing increase, a situation that cannot be sustained over the long term. The amount of energy used in transportation dominates our consumption patterns. This is because of our reliance on private single occupancy vehicles for commuting and other needs. ISTEA is the first significant legislation which pursues intermodal surface transportation and encourages a broader view of regional transportation systems. Intermodal transportation which has predicated on strong transit components allows us to achieve important national goals from improved air quality, energy conservation, international competitiveness, and mobility for elderly, persons with disabilities, and the economically disadvantaged.

The transit operators testifying with me today have had various experiences with ISTEA. My message is that flexibility will be an agent of change that will lead to successful national transportation systems for the next century.

As the committee reviews the process of ISTEA and considers possible refinement of the original legislation, I urge you to consider ways in which FTA can improve its outreach and communication with local governments, MPOs, and transit operators. Flexibility will work most effectively when it is fully understood. The legislation also holds out the possibility of significant funding increases for mass transit. It blunts the harsh rhetoric and devastating budget proposals of the past 12 years and looks ahead toward steadily increasing transit investment.

Transit Now respectfully requests that the committee increase the amount of funds available for the mass transit account of the

highway trust fund. There are significant resources currently available to be utilized that would not need to come through appropriated general funds. Advocates of mass transit including Transit Now have recently held discussions with the Department of Transportation and high ranking officials at the White House to protect the transit portion of the 2.5 cent gasoline tax which became law in 1990. As you are aware, public policy changes were discussed within the Administration which would have a potentially devastating effect on transit fund revenues. Now that this crisis is apparently over, we look to you to assist us in utilizing the trust fund to its fullest extent possible.

Mr. Chairman, transit is investment. It is an investment that has whittled down in the past but with adequate resources people can be put to work, infrastructure can be repaired and improved, the air can become cleaner, and congestion can be reduced. This committee drafted landmark legislation just two years ago. Transit Now and its 179 members are committed to working with you to support transit and the implementation of ISTEIA. Thank you for this opportunity to testify before you.

Mr. RAHALL. Thank you, John.

Let me ask a question to the entire panel. Anyone may answer it. AGFA advocates the participation of transit operators on MPOs which is certainly a good idea on the face of it. How would you allocate MPO representation among transit operators in areas in which multiple transit providers are present?

Mr. TOWNES. In my region I would like for each transit provider to have an equal vote at the table, a one vote per transit provider.

Mr. RAHALL. One vote for each transit provider?

Mr. TOWNES. Yes, and that is one of the successes, minor successes that we have had because there is one vote for each transit provider including the section 18 provider.

Mr. STANGL. Since we operate the largest system around I am not sure that I would want it that way. But I think clearly some set of criteria, and they could be simple, they don't have to be complicated, having to do with ridership or some measure of geographic area would give you some sense of balance. I think that in general I would agree with principle that my colleague has enunciated. I think there may be some other criteria that you want to look at. Ridership is clearly one.

Ms. CONNOR. I would just like to add that it would occur to me that it would make sense that every transit operator have an opportunity to be represented on the MPO level and in a capacity equal with a percentage of the service that they provide.

Mr. WALSH. Like Peter, I come from a jurisdiction with a single agency and in our MPO I hold that seat and I think I am 1 out of 24 votes on the MPO. I think more important than the division of seats is probably the unification of a voice that transit would bring to that MPO. In my judgement, that is much more important than any specific number of seats.

Mr. RAHALL. Was there some further comment?

Ms. CONNOR. Yes. The problem that we have in Massachusetts is not that each transit operator is not represented, we all are and we are all single district transit operators. The problem in Massa-

chusetts is the split between State and local interests in that process.

Mr. RAHALL. Yes. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Coming from a rural State that has very little mass transit, though we are beginning in that area and seeing some develop, I have a question regarding the issue of flexibility. Do you believe that the amounts of flexible funding transferred to transit projects has not been as substantial as you would envision. Is there a primary reason to which you attribute this phenomenon, and do you see this situation changing significantly in future years? Why do you believe that the largest pot of flexible money, the STP funds, accounted for the least amount of transferred funds to transit projects so far? Could you elaborate on that issue of flexibility on and funding in general.

Mr. STANGL. I would say, in general, and I will leave part of the answer to my colleagues, these are labeled as highway money and I think there is a presumption somehow that they have to be pulled away from the highway projects in order to be used for transit. I would much rather see a pot of money called flexible transportation money. It could be somewhere in between transit and highways and then we can define it as being neutral and perhaps it might lead to a better result.

The other, and I say this although it is obvious, is given the very serious economic problems that we have had in the country in the last couple of years, given the low levels of funding particularly in the transit categories and also in highways to a certain extent, the pressure on resources has been so great that everybody is trying to protect every single dollar that they have. There seems to me very little open discussion and willingness to really look at projects based on criteria that do go to what cleans the air, what reduces congestion, what makes for a better quality of life. I think those are a couple of things that would certainly be at the top of my list.

Mr. TOWNES. With regard to the first part of your question, no, there isn't one major problem or roadblock to obtaining flexible funding. There is a laundry list of issues that arise on a regional and local level when you as a transit provider propose a project under one of the flexible categories. Among them is the matching ratio, the visibility of the project, the nature of the MPO, whether or not the jurisdictions are urbanized or rural or suburban. And that has an impact on whether they support transit projects.

Mr. HUTCHINSON. Do you agree, I am kind of curious, with your colleague that the very nomenclature, the terminology of it kind of pre-biases and prejudices the process?

Mr. TOWNES. Absolutely, and that is formalize in the Commonwealth of Virginia because in the Commonwealth the State DOT programs, all STP money is highway money. It is all programmed for highway projects.

Mr. HUTCHINSON. So even changing what that is called might make it easier to see that funding used.

Mr. TOWNES. Well the nomenclature change would certainly be helpful but I would like to see it backed up by some regulatory clout.

Mr. HUTCHINSON. More substantive. Okay. Anybody else on that?

Ms. CONNOR. Right. The reason I think the CMAQ funds were flexed to a higher degree was because it was a new category, it was not something the highway departments in the local area had gotten used to spending. But the STP money, again, was looked at almost like pulling the road money away from the rural communities and that was not the intent I am sure of the ISTEA.

Mr. HUTCHINSON. So new funding money, it will be easier to see that flexed as opposed to, as you were saying, that everybody is trying to protect what they have had.

Mr. WALSH. Simply out of our experience in Oregon with the e(4) withdrawal funds, we really both at the MPO and at the State level see those as flexible funds not highway dollars to be pried away. No more than there is a prejudice for concrete over asphalt do we find in the allocation of those funds a bias in either direction. But I would say with absolute candor that we have had 15 years of experience following those interstate withdrawal programs of the early 1970s to learn to do that. Once those lessons are learned they are masterful.

Mr. HUTCHINSON. I came in late. I heard there was a map.

Mr. STANGL. If you would like to see the map you can see it now. Where is the map? You can get closer if you like. [Laughter.]

Mr. HUTCHINSON. Could you just expand a little bit on the map and what was the process in formulating it. Were there other organizations besides APTA that were involved in its production? Elaborate a little bit about that.

Mr. STANGL. With your permission, if I could ask one of my colleagues from APTA, Bob Batchelder, to come up and comment on that because he was very much involved in that.

Mr. RAHALL. Would you fully identify yourself for the record, please?

Mr. BATCHELDER. Yes, sir. Mr. Chairman, I am Bob Batchelder. I am APTA's chief counsel on the staff of the American Public Transit Association. We started the Map project about one year ago when we became aware of the National Highway System map development and we felt we needed to give the committee and the public and the transportation community a broader prospective than just the National Highway System map and so we sat down with a broad array of surface transportation interest—AmTrack, the Community Transportation Association of America, Inner-City Bus Interests, the High Speed Rail Association—and we tried to work with those organizations to show you the people moving surface transportation system of the United States and the fact that we are all part of a connected transportation system, surface transportation system.

Part of the white lines you see on there are the existing Interstate Highway System and that is certainly part of the surface transportation network but it is not the only part. The AmTrack system, the High Speed Rail proposals, the many thousands of rural transportation providers are critical to America's surface transportation network. So we tried to give you a look at the people moving system of transportation rather than the vehicle moving system of transportation represented by the National Highway System.

We are in development of another iteration of the map now where we hope to show more clearly the role of inner-city bus, more clearly the role of the rural and small transportation providers in our country. It is very difficult to show that in a map of that scale. Yet we are going to be trying to work with all those organizations and make sure that their interests are reflected on the map.

Mr. HUTCHINSON. Excuse me. So the map is still being formulated as far as taking input of other organizations and local governmental entities?

Mr. BATCHELDER. It absolutely is and we call it a work in progress; we are never going to say it is complete. We are going to keep working on it, adding to it, refining it, but that is where we were at a point in March and we hope to have another version out late in May. We would like to keep the committee apprised of our progress as you move along with the National Highway System, and that can keep this people moving component of our surface transportation network in mind as we move forward with the National Highway System map development.

Mr. HUTCHINSON. Thank you. I thank the panel and thank you, Mr. Chairman.

Mr. RAHALL. Gentlemen, I have one last question before dismissing you.

Do you have any questions? The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Mr. Stangl, how do you pronounce that correctly?

Mr. STANGL. Stangl.

Mr. LAUGHLIN. Stangl.

Mr. STANGL. Stangl.

Mr. LAUGHLIN. Stangl. [Laughter.]

Mr. STANGL. Yes.

Mr. LAUGHLIN. It is just that I do not say it the way you do and I apologize. It appears that it is in your testimony about the inequity of the funding through ISTEA on rural and big city funding and I have always had a concern about that. I represent a large rural area. It is larger than eight of the States in the United States and we have no subways in my district, we have no commercial aircraft that land in the district. So you can identify the concern I have. You talk about the ability to transfer into the discretionary funding which was set at 85 percent of the authorized funding. How do you recommend that we fix this inequity that you have identified or that was identified in your testimony?

Mr. STANGL. The first comment I made was not so much of competition between rural and urban; I want to clarify that. I was commenting on the fact that highways in essence had been fully funded and transit had not. I thought that was a problem because that put a tremendous amount of pressure on transit. So I was not trying to pit rural against urban at all. I think clearly there are transportation needs throughout the country whether they are rural or urban or suburban. I think that what we have to do is adequately fund all aspects of transportation rather than pitting us against each other. So that was my major point there.

Mr. LAUGHLIN. I appreciate that. The concern I have with the MPOs is they tend to take care of the big cities within the MPO

and they often will forget people in the rural area generally spend a substantial portion of their money in the big cities.

Mr. STANGL. Let me give you an example of what is going on in New York because it is not so much a rural-urban discussion, it is more of a suburban, if you will. I live in a suburban county outside New York City called Westchester County. It is a rather large county, it has hundreds of thousands of people in it. It is not a rural area. Nassau and Suffolk Counties are also counties outside of New York City. They are all part of the region that I serve. So all of these issues come together with me and my board and I can tell you within the MPO, and there are three of them in the area, that the suburban, if you will, rural areas, are very well represented. It may be on a statewide basis where you have—in New York State for example, most people do not know I think it is the third largest farm State in the country. It has an awful lot of rural areas. So we have an up State-down State issue that gets to the rural question versus the more urbanized areas. But it does not necessarily show up, in my case at least, in the debates that go on within the MPO.

Mr. LAUGHLIN. I want to assure you that I know the difference between a suburban area and rural because in my State the suburban areas have the best freeways, the best roads, and their Members of Congress and members in our legislature generally vote against the highway bills and vote against the funds and taxes to pay for it. I will just share with you that the executive director of our State Highway Department and I have had very harsh words over it. I think it is politically prostitution to get the best highways in a respective State whether it is suburban or rural and then the representatives at both levels of Government demagogue against it and vote against it and criticize those who vote for it. You may have a different problem than we have in my State, but the suburban areas are well taken care of in my State. That is not where my concern is. So I thank you.

Mr. RAHALL. Let me ask the panel one final question if I might. In the past, APTA has advocated adjustments to the Federal Operating Assistance Program such as making maintenance costs eligible for capital funds. Do you have any current thoughts on this concept or on other ways that we could maximize limited Federal Operating Assistance dollars?

Ms. CONNOR. I, for one, would be an advocate of being able to use operating funds to fund maintenance. PVTA has the third oldest bus fleet in the country, I have to say that while I have a chance. I have 200 buses that are 40 foot coaches, the average age is 16.5 years old. With the inability to get the stimulus package and the inability to get money for new buses, the cost of maintenance that we are enduring is quite severe and ability for some relief in terms of being able to use capital money would assist transit properties like PVTA and I am sure I am not that different from a lot of mid-size properties.

Mr. TOWNES. I am enthusiastically supportive of the concept of using more capital money for what were traditionally considered operating expenses. In a small operation like mine in a State where State funding has been level for the last six or seven years, and you know what is happening with Federal operating funding, the

dollar for dollar increases in service, and there is a great deal of demand for increase in service, must be born by the jurisdictions. You know that they are under a great deal of pressure to do this and that with schools, police, with lots of unfunded mandates besides transits, ADA, and other issues. So I would enthusiastically support that.

But one more thing I would like to say is if you could fully fund the operating cap, that would give us a 20 percent operating increase. That would be fantastic.

Mr. WALSH. In our system, Mr. Chairman, we somewhat regularly try to return to the voters part for capital but also part for operating funds. The Federal assistance which we get which is almost exclusively confined to capital serves us very well. We recognize in a growing system we have the repeated need to return to our voters for a mandate for growth and with that mandate for growth comes support. I think as we look a decade ahead, the view of our agency alone, not of APTA, would be that we will with local resources plus fare box take care of our operating and maintenance needs. We will remain substantially dependent upon Federal assistance for capital.

Ms. CONNOR. Mr. Chairman, I would like to clarify my earlier remarks and I want to make sure that you understood that what I am looking for would be an ability to use capital money for maintenance.

Mr. RAHALL. Thank you very much. Without any objection, the Chair would like to leave the record open for some written questions to be submitted to this panel from all members actually but especially from the gentleman from New York, Mr. Nadler, who wanted the permission and was unable to stay to ask the questions in person.

Mr. STANGL. Thank you, Mr. Chairman.

Mr. RAHALL. Thank you very much.

Our next panel is composed of Mr. David Marsh, the executive director of the Capital Area Rural Transit System, CARTS, of Austin, Texas and president of board of directors, Community Transportation Association of America; the Honorable Vernon Richards, Mayor of the City of Smithville, Texas. Ms. Vicki Shaffer, general manager, TTA, Huntington, West Virginia was scheduled to testify but is unable to be with us and has submitted her statement for the record. Also we will hear from Mr. Erik Menzer, executive director, Community Transit Incorporated, York, Pennsylvania, on behalf of the Community Transportation Association of America. For purposes of introducing members of this panel, the Chair will recognize the gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. I apologize for not being here when this hearing started particularly since the Secretary of Transportation is a native of our State. But I do want to welcome Mayor Richards and Dave Marsh to this hearing. Mayor Richards is Mayor of Smithville and, Mr. Chairman, it is one of the dynamic rural towns in America because, as you well know coming from West Virginia, and you have been to my district, we have shared that many rural towns are dying on the vine for many different reasons and Mayor Richards' town of Smithville is in no way dying on the vine. In fact, if you drive by the highway you will see

that they have a large sign to construct a new hospital. Unheard of in rural Texas and much of rural America. It is not only going to be constructed, the current one is profitable and not about to get its door closed. And David Marsh is certainly a leader in rural transit. I am very pleased to have both of these constituents from the 14th District of Texas here and I look forward to their testimony. I certainly want to welcome them at this time even though I was at another hearing in another of our House office buildings. So welcome Mayor and welcome David. Thank you for being here.

I might observe in his prior career, the Mayor was an office manager at one time of Southwestern Bell offices in six of the towns that are in the 14th District. He was in some other towns in his career but six of the offices that he was office manager of are towns that I represent or that make up the 14th District, and then he went on to higher levels. So he brings a wealth of experience to his job.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Greg.

Gentlemen, we have copies of your prepared testimony and they will be made part of the record as if actually read at this point and you may proceed as you desire.

TESTIMONY OF DAVID MARSH, EXECUTIVE DIRECTOR, CAPITAL AREA RURAL TRANSIT SYSTEMS (CARTS), AUSTIN, TX, AND PRESIDENT, BOARD OF DIRECTORS, COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA; HON. VERNON RICHARDS, MAYOR, CITY OF SMITHVILLE, TX; ERIC MENZER, EXECUTIVE DIRECTOR, COMMUNITY TRANSIT, INC., YORK, PA

Mr. MARSH. Thank you, Mr. Chairman and members of the committee. I am sure you all are ready for a change of pace. After a long morning it is certainly refreshing to look up at the panel and see that we have a rural majority here as well. I would like to serve as the moderator of this panel for right now and hold up a chart which I know you can't see, but this chart represents Federal transit assistance for the United States of America. You can see the large black part but these little bitty narrow lines here, well that is who we are. We are the very small slices of the pie that the Federal Government disburses for the sake of mobility in this country.

With no further ado, I would like to introduce Mr. Eric Menzer. Eric is the executive director of the Community Transit in York, Pennsylvania, and operates a mixed system of section 9 Small Urban, section 18, and coordinated section 16. Eric.

Mr. MENZER. Good afternoon, Mr. Chairman and members of the committee. My name is Eric Menzer and I am executive director of Community Transit in York, Pennsylvania. I also serve as the senior vice president of the Pennsylvania Association of Municipal Transit Authorities and as secretary and legislative committee chairman for the Pennsylvania Association for Community Transportation which represents a constituency of small urban and rural systems similar to that of CTAA. I want to thank you for the opportunity to appear you before you today to discuss issues arising out

of the implementation of ISTEA and the challenges we face providing public transit services in small urban and rural areas.

We operate 54 vehicles in my system. We provide both fixed route and para-transit service in York County Pennsylvania. We carry about 1.1 million passengers annually. I was listening to Mr. Stangl's testimony and figured I carry as many passengers in a year as he carries in morning rush hour. Our system is an alliance of two organizations; one a non-profit corporation, the other a public transit authority. As David Marsh mentioned, we receive operating funding from the sections 9 and 18 programs as well as numerous State and human service funding sources to support a \$3.8 million annual budget. We also receive section 16 capital funding, and we are currently participating in a consolidated statewide section 3 bus procurement. Our urbanized area of population is about 150,000 and our county population is 360,000.

Our county represents truly a mix and I think is really representative of what is happening in America today. Our county had the fastest growing population in Pennsylvania in 1991. We are a nonattainment area for ozone, and we had a significant commuter population heading into Baltimore every day yet we regularly serve rural passengers whose homes have no indoor plumbing and who call us from a general store nearby because they have no telephones.

I want to tell you first today of an ISTEA success story yet it is one that raises interesting questions about where the Federal transit program is headed. I was informed just about a week ago that we have been awarded a \$650,000 grant from the Congestion Mitigation and Air Quality Program. With these funds we will start a car pool matching program for those commuters I mentioned earlier and undertake a significant marketing program designed to increase ridership on our fixed route system by 15 percent. While I was frustrated that it took 18 months for the Pennsylvania Department of Transportation to make its first statewide allocation of CMAQ funds, this project is an example of flexible funding at work.

At the same time, however, we are struggling to avoid service cuts as increases in expenses, flat or reduced operating assistance, and the increasing demands of ADA, drug testing, and the Clean Air Act strain our ability to make ends meet. So at the same time that we are spending over \$650,000 in CMAQ funds to encourage people to try public transit we are reducing service levels. In my system's case, we are not talking about whether a bus arrives every eight minutes or every five minutes, but whether a bus arrives every hour instead of every 30 minutes, or, in some cases, whether it arrives at all. We have enough of a job convincing the public in small cities to try transit as a clean air solution at the service levels we operate now, much less at reduced service levels.

I have no doubt that you hear many claims that money is the answer to all sorts of problems. I would submit to you that money is not the answer to all of transit's problems but in this case it is. Of course ISTEA-authorized funding levels, if reached, would go a long way towards solving this problem. But just full funding of the \$5.3 billion fiscal year 1994 authorized level is not enough if funding is not balanced between the formula and the discretionary programs and if operating assistance in particular is not increased.

While Federal Operating Assistance is important to all systems, it funds 36 percent of my budget and a similar percentage for other small systems as opposed to 4 percent on average for urbanized areas with populations over 1 million.

We suggest a legislative solution to this problem along the lines outlined by David Marsh in the written testimony which he submitted to the committee which would require the blending of all newly appropriated funds in order to maintain the balance within the ISTEA framework. CTAA would be happy to meet with committee members and staff to further discuss this proposal. A particular frustration if the formula program does not grow and the discretionary program does is the fact that large amounts of funding sit tied up while slow planning processes for major construction processes grind along. It is difficult to accept the fact that discretionary bus funding is not available for truly ready-to-go procurement while hundreds of millions of dollars sit unused in the new starts, rail modernization, and even discretionary bus portions of the program. Perhaps "use-it-or-lose-it" time limits on section 3 funds, with reasonable deadlines that recognize the differences and complexity of a new start versus a bus procurement, should be considered in the new authorization bill.

As we face this situation in our urbanized system, the levels of service in the rural portion of our county are much lower. Our section 18 program provides service in just one portion of the county and receives about 1/20th of the level of funding annually as our urban program does. This is not atypical of our national situation. For instance, annual per capita transit spending ranges from \$35 in the largest urban areas to \$7.79 in small urban areas. But we spend only \$1.50 per capita annually on transit in the rural areas and those are areas, I would submit to you, in which because of their geography, it is generally more expensive to provide service. To address this situation we would like to see a major needs assessment started now in preparation for the reauthorization of ISTEA to quantify the transit dependent population nationally, to estimate actual unmet transit needs, and to establish minimum service levels for communities of all sizes.

Finally, going back to a success story before I close, I want to tell you in particular about the success of the RTAP program in Pennsylvania. You heard the acting FTA Administrator refer to that earlier. We want to urge you to find a legislative mechanism to ensure that this program grows as the total ISTEA program grows. It is our understanding that this was the intention of ISTEA but it has not happened. In Pennsylvania RTAP is currently funding the salary of a full time training coordinator who manages six training contractors presenting programs ranging from a small vehicle air conditioning maintenance program to fixed route schedule planning techniques. For most of these systems that send employees to these sessions, these are the only training activities that they can afford. Within the past year, hundreds of mechanics, driver trainers, dispatchers, and managers in Pennsylvania have attended these programs. The RTAP program is not funding esoteric studies, rather it is providing cost effective technical assistance for rural systems nationwide. To ensure that this continues and ex-

pands, we propose that RTAP receive a permanent off-the-top-set aside of .15 percent of the FTA budget.

I want to thank you for the opportunity to speak to you today and I would be happy to answer any questions you might have.

Mr. RAHALL. Thank you.

Before proceeding further, the Chair will recognize the gentleman from Pennsylvania, Mr. Goodling.

Mr. GOODLING. Thank you, Mr. Chairman. I am sorry I could not get down in time to introduce Eric. We are very fortunate to have Eric as our executive director in York. He and I have been working on several issues; one is trying to get affordable transportation for those who are trained, who are handicapped and they find that the transportation cost them more than the wages that they earned and it makes it very, very difficult. I just want to welcome him here and I hope that we can help him. We need all the help we can get in the York area.

Mr. RAHALL. Thank you.

Let me ask a couple of questions. Do you foresee any difficulties, and this is for anybody on the panel, in tracking and enforcing your proposal to require that 20 percent of available planning resources be used for transit planning purposes?

Mr. MARSH. Do we foresee a problem in that occurring? Yes.

Mr. RAHALL. In tracking and enforcing it.

Mr. MARSH. I would foresee a significant hurdle in strictly enforcing such a dictum but the benefits I believe would outweigh the complexities of enforcing it. Whether the Federal Government is willing to put that sort of onus on the State is the question.

Mr. RAHALL. Do others want to answer that? And then, I am sorry, we will get back and hear the prepared testimony of Mayor Richards and further from you, Mr. Marsh.

Mr. MENZER. No. I would agree with David that, yes, it is difficult. We see the benefits far outweighing the difficulties.

Mr. RAHALL. Mr. Mayor, why don't we recognize you at this point for your testimony.

Mr. RICHARDS. Chairman Rahall, members of this committee, and my congressional representative, Congressman Laughlin, thank you for that introduction. It is a privilege and a pleasure to have the opportunity to testify here today. My name is Vernon Richards and I am the Mayor of Smithville. As Greg pointed out, we are rolling. We are doing very well for a small community. My testimony is a little different today maybe from some of the others because I don't know all the technical details. But I do know from personal experience the importance of transportation in my community. And before I go any further, I would like to tell you where Smithville, Texas is. I never fail to make that point because I want everybody to know where we are. We are 40 miles east of our capital city of Austin. And I was very impressed this morning when Secretary Peña knew the location of my town. And I did not know until Congressman Laughlin made that comment a minute ago that he is a native Texan. But Smithville is——

Mr. LAUGHLIN. Unfortunately, he went to school in that city where the capital is.

Mr. RICHARDS. He told me and I didn't mention that.

Mr. LAUGHLIN. But the wisdom of all the rest of his family is they went to the great school down on the Brazos River. There is only one great school on the Brazos River, Texas A&M. [Laughter.]

Mr. RICHARDS. Smithville is like many other small towns in America. We are struggling to survive. And we decided that we would be one little city in Texas, one little city in America that wouldn't die, that we would change our attitude from a "can't do" to a "can do" attitude. And we have been very successful at that. We wrote a master plan and in that master plan we had visions and goals of things that we wanted to accomplish. And our first goal was economic development and I want to spend some time on that today because what this committee does and what the transportation bill does is assist small communities as far as economic development is concerned.

One of the first things we started doing is looking for new jobs. One of the first business prospects that came to Smithville was a steel furniture assembler and I asked him, the president of that company, what are you looking for other than incentives. And he said that—he named several things and I think this helps me as far as my testimony today—he said, we're looking for the right attitude as far as city Government is concerned and the citizens. We're looking for a good quality of life. We're looking for a clean community. We're looking for state of the art telecommunications, low crime, and transportation. And he said what we need in our business, we need rail, which we had in Smithville, we need the truck freight, we need bus service, and we need air. And as a result of that and after talking to several other prospective businesses, we started taking a look at what we needed to do as far as transportation in our community.

As Congressman Laughlin so stated a minute ago, it's very important, I think, for this committee and Congress to consider the real communities because that's the only way that we're going to survive is to have adequate transportation. And as Mayor I worked with Mr. Marsh, who is on this panel, to come up and establish a transit system in Smithville. We needed a location. We only had a certain amount of money that was available. We had to get that approved. We found a run-down, vacant automobile agency that needed care. After some time we were able to get the plan approved and that automobile agency was purchased and remodeled and we set up a transit system in Smithville. In that process I wrote my Senators, I called my Congressman numerous times and finally it was approved, and I think we spent about \$300,000 on that facility. In a small town, \$300,000 has a great impact on the community. It means new jobs, it means that we cleaned up a sore spot, and it provided much-needed transportation. In Smithville we had one bus line that served our community. That bus line stopped at a service station without adequate restrooms and no seating. Now we have seating, adequate seating, we have nice restrooms, and bus service comes through every morning and every afternoon traveling between Austin and Houston. A great benefit to our small community.

Work transportation, about 80 people in our community live in Smithville but travel to Austin to work. Many of these people use the bus service for job transportation. A bus leaves early in the

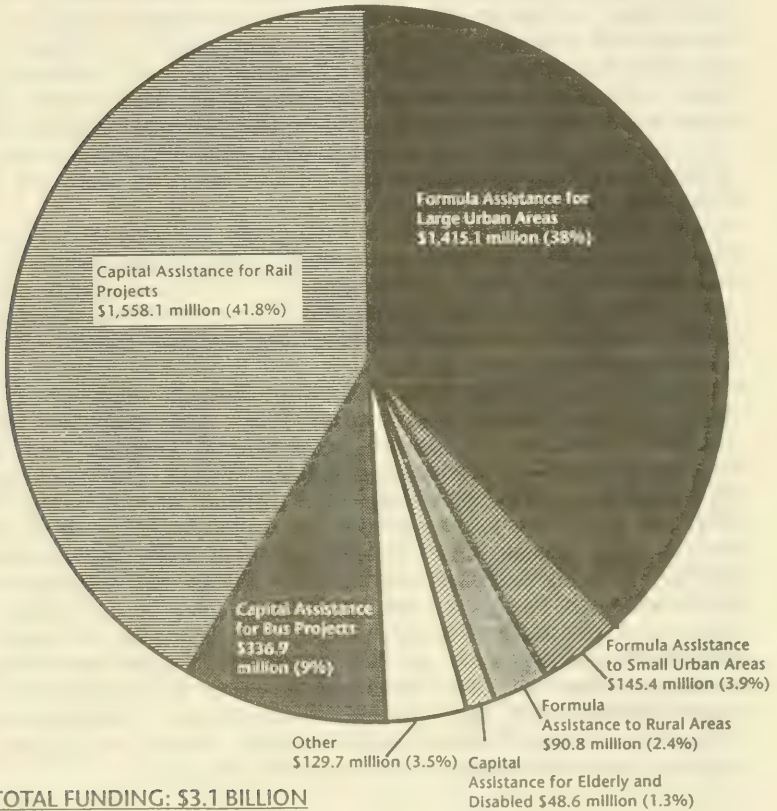
morning, drops them off, they go to work, after work they catch the bus back to Smithville. Important to those people. Some people wouldn't have a job if it would not be for that type of service.

This service is also provided for the needy and the elderly, disabled and children. And I can speak personally to that as my mother is 89 years old and she has very few friends left in this world, but from time to time we use this service to take her to parties or for her social activities. Our needy use the services to go to the grocery store, to the hospital. Many of our citizens use the service to travel back and forth to Austin to the larger hospitals. The buses are used for special events, such as our annual jamboree. That's a local celebration that we have every year. The buses take people from the high school parking lot to the celebration area. Many people use that, several hundred people used that this past weekend. Transit services provide a network of services that are crucial to the welfare of small town America.

I want to thank you for allowing me the opportunity to appear before you today to voice my concerns and appreciation to you individually for the great challenges that you face in this country. We would appreciate your continued help and your continued work with us to expand and improve the transit system in America. Thank you very much.

Mr. MARSH. Thank you, Chairman Rahall, members of the committee. I am David Marsh and I am the executive director of CARTS, a section 18 funded rural transit system, serving a 7800 square mile area surrounding Austin, Texas. Our system operates 75 vehicles, providing a third of a million trips a year, 15 percent of those involving journeys to work or job training with 25 percent health care access. Our service connects with the Capital Metropolitan Transit Authority in Austin, Texas and we share terminal facilities with two inter-city carriers in two of our cities. We are, I hope, an example of coordinated public transportation on an area-wide basis. I also serve as the president of the Community Transportation Association of America, a national organization of rural, small urban, and specialized transportation providers and advocates. As I earlier held up, we are these little thin slices of the pie in this pie chart which we will provide for you.

BREAKDOWN OF FEDERAL TRANSIT ASSISTANCE — FY 1993



Source: FTA FY 1993 appropriations, Congressional Record, September 28, 1992, Conference Report



**COMMUNITY
TRANSPORTATION
ASSOCIATION OF AMERICA**

Mr. MARSH. In serving on the CTA board, I am also elected from a five-State region which includes the great state of Arkansas and represent Ozark Transit which, I believe, is in Congressman Hutchinson's district. So, as I said earlier, I'm real pleased to see friendly, rural faces on the panel facing me as I begin to deviate from my remarks. You have my prepared statement, I won't trouble you with reading through the whole thing but I would like to hit a few high points if I could.

One, we operate in 40 rural communities in my service area and all of them are wonderful communities, but what makes each community different is the leadership. And the reason we have an inter-modal transit facility in Smithville is because Mayor Richards took an active interest and realized that our operation was a local business that needed cultivation and that needed continued assistance to remain a viable part of their community. Because of that, we have formed a permanent base in that community and as a hub of one-third of our service area. The Smithville project was one of five inter-modal projects that we have completed or we will have completed by the end of this year. You will notice that our remarks will only peripherally address highway issues. We probably won't talk about tunnels or trains too much. The five inter-modal facilities that we are building cost a total of \$1.6 million. That is not much money for the amount of service that will operate out of those facilities. They vary from park-and-ride lots with bus terminals to inter-modal facilities that integrate with the metropolitan transit authority. A lot of bang for the buck in rural and small urban areas. It doesn't take a lot of money to do a lot of good in those areas.

We commend the committee on their past work in reference to ISTEA. This committee has every reason to be proud of its work on that legislation and we are grateful for the opportunity to both thank you as well as discuss some issues that may merit some fine tuning. Thanks in large part to the efforts of Congressman Rahall, ISTEA's enactment two years ago took a major step towards a more balanced transit assistance in our country. The landmark legislation also speaks in a significant way to the issue of balance in the broader area of surface transportation policy by making a large part of the funding previously dedicated to highway activities intermodally flexible, at least in theory. It's time and we appreciate that the ISTEA legislation has ended the myth that transit is for cities and highways are for rural areas. All areas need both.

All transit advocates will agree that the thing ISTEA needs most is to be fully funded, a matter that is not within the jurisdiction of this committee. Beyond that, however, there are some changes we believe could be made on the authorizing side to improve the implementation of ISTEA, especially in a time when full funding is so illusive an objective. I'd like to just hit some of the high points that we have made here today and also ask that the testimony of Vickie Shaffer, of the great State of West Virginia, who is unable to be here, will be included in the testimony.

One thing we talked about was to assure some balance and equity and Congressman Laughlin is very familiar with the equity issue that he brought up earlier that was somewhat addressed. My pie chart. Of the people sitting here, we're talking about less than

6 percent of all the people we represent which I believe accounts for at least 40 percent of the population, we're looking at less than 6 percent of the money which goes to help us provide that necessary mobility. That mobility in a rural area is the only alternative to isolation. Eric made the point that the large metropolitan areas depend very little on Federal assistance. I think the point was made here earlier by our colleagues from APTA, however, the operating assistance that we depend on determines on whether there is a bus that hits the town once a week, once a month, or at all.

We ask that there should be some balance in the formula and discretionary funding. If we could maintain the ISTEA ratio of 1.4 formula dollars to every discretionary dollar by requiring an appropriate share of discretionary funding be allocated to formula programs, it would help. Small urban areas have a difficulty with the operating cap which has been imposed and is artificially keeping the operation from achieving their potential. In recognition of the greater dependence on Federal funds, we believe the cap should be released, at least on the smaller urban areas.

We'd like to see a temporary mandate compliance fund. You may have heard ad nauseam about all the regulations we deal with and how much it costs for us to comply with those regulations. We'd like to see a three to five year fund established to assist transit agencies of all sizes in meeting the needs of the complying with ADA, the Clean Air Act, and the Omnibus Transportation Employee Testing Act.

Inter city bus service was touched on briefly here today. We recognize a problem in America with inter city bus transportation and there are two parties providing service in rural areas: that's us and the inter city bus companies. However, we believe it's a national problem and that to fund that program from the smallest of the programs is (a) not going to solve the problem, and (b) is only going to exacerbate the problem because of our difficulty in maintaining the services we provide under funding cuts. We'd like to see the take-down for inter city bus assistance be off the total formula allocation which would account for less than 1 percent of that amount. Right now you are taking 15 percent from the smallest program. Let's take 1 percent from everybody and perhaps we can have a program that will meet the needs without defeating the purposes of those that are there to help complement that inter city bus service.

Unmet rural transit needs: even though there are nearly 1,300 rural transit agencies in the country, estimates are that 40 percent of the country is still not served. And of the 60 percent that is served, many of those areas are served very infrequently. I have cities in my service area that I go through once a month.

Minimum transit investment for TIPS and STIPS, this was earlier referred to by Congressman Rahall. We believe that somehow there has to be a way to make the TIP, the State Transportation Improvement Programs and the MPO programs and the rural programs really recognize transit as part of the inter-modality that we are all trying to achieve and we don't believe there is a way to do it unless there is an earmark or a set aside of some portion. We suggest 20 percent.

Section 3 funds: there are many outstanding capital needs and the gentleman from New York was most eloquent in representing those needs. We recognize and support those capital needs that the large cities have. However, there are section 3 funds in this country that have been around for a long time. We think there should be a use-it-or-lose-it provision for all section 3 funds. We recognize the long start up of some projects but why should projects of some merit go unfunded while money is allocated to projects that don't seem to be moving.

Eric mentioned the RTAP funding. RTAP is a very small program in this Government that does a lot of good. We believe a set aside to assure that the program's continuity and growth can be assured would be a good step by this committee. We believe a percentage of the total FTA budget would be a way to mark that like you do with section 16, to ensure the RTAP program stays viable.

In many rural areas the problem is not the fact that federal money is not there, it's the match to access that Federal money. We believe that a provision authorizing a reduced match where per capita income is low and the local tax effort is above average should be something this committee could think about. It was previously recommended and discussed and I think it should be brought up again.

We believe there is a lot of money out here in our areas that is being used now in an uncoordinated fashion; that if we better coordinated human service monies and transit monies, we could build systems and we could fund systems without adding a lot more tax burden on the public. I think there should be some mandate and our remarks address it more fully on how to address the coordination of HHS and transit monies.

I would also like to say that the increased public investment in transit in rural and small urban areas as well as large metropolitan areas represents an attempt, in my opinion, to recreate something that existed in this Nation to a far greater extent 50 years ago. That is a real range of mobility options for people in all areas. Fifty years ago we had passenger train service throughout this country and not just in a few major corridors. We had a network of inter city bus service that was even more widely available. We had light rail systems and inter-urban trolleys in and connecting small towns. Since then we have become almost totally dependent on a single mode of transportation, the private auto and that private auto's consort, the highway system. We believe in the highway system, we run on the highway system, we support the highway system, but until people are given other choices as well, we cannot build enough highways to satisfy the travel needs of this country. If intermodalism means anything, surely it means providing a choice of modes to more Americans. If we are serious about investing in our human resources, we need to remember that this means investing in their mobility as well as their health and education.

In terms of national transportation policy, we need to recognize that isolation is as critical as congestion. In rural areas especially, overcoming isolation is essential to facilitate the investment in health, education and jobs.

I thank you for your patience for sitting through four panels including ours, and the panel will be happy to answer your questions at this time.

Mr. RAHALL. Thank you, gentlemen. Let me continue with some questions. I had started out of order a little earlier. How can you be assured that a mandatory planning set aside would result in higher spending on rural, and small urban transit projects.

Mr. MARSH. Planning is a section of our lives in rural and small urban areas that we rarely have the pleasure to entertain to a great extent. We usually find ourselves putting out fires every day instead of planning ahead. There are no money set asides. Section 26 gives the States funds to do master plans and intermodal studies that often don't get down to our level. If the States and MPOs at least had to certify that they met a minimum 20 percent threshold of time and manpower in their TIP for consideration of transit aspects, I think that in time the influence of transit in those plans would increase and so would the ability to plan projects far out like highway projects for 20 years out. Transit has never done that to the extent we should because of lack of resources. I hope that answers your question somewhat.

Mr. RAHALL. Yes. Anybody else wish to comment?

Mr. MENZER. Well I'll just add that at least in the expression of the committee that a certain level is appropriate might get to Congressman Hutchinson's point earlier about language and how that influences how people act and if the expression of the committee was that there is some kind of certification that should be made, then perhaps that makes sure that the intent of the committee follows through and flows through to the local level. I am extremely fortunate in York to have a planning commission and an MPO that recognize transit as a significant player in the community. And I think I have to credit the Pennsylvania Department of Transportation at the highest levels. I think to a great extent we have won their hearts and their minds on the transit-highways issue. I don't think we have begun to touch the bureaucracy at the local, State, and Federal level that has, in fact, lived the transit versus highways kind of a split for the past 20 years. And I think that further encouragement from the committee, even if it's nothing more than certifications and that kind of thing, can start to turn that around.

Mr. RAHALL. How would you transfer funds to transit operators, by what formula for example, to ensure that they meet Federal mandates, I mean to cause the Federal mandates?

Mr. MENZER. I think one of the ideas that has been advanced by some members of our association is to allow certain operating expenses associated with those mandates. You know, there is the provision now, for instance, that capital costs associated with implementing Clean Air Act and ADA improvements can be funded at a 90-10 rather than an 80-20 match. I think one of the ideas that we'd like you to take a look at is allowing certain operating expenses associated with that kind of implementation to be treated at an 80-20 match using the formula capital dollars for that purpose. We understand that there might be some legal and technical things involved but we think it would be worth your time.

Mr. RAHALL. Does the gentleman from Texas, Mr. Laughlin, have any questions?

Mr. LAUGHLIN. Thank you, Mr. Chairman, and Mayor Richards thank you very much for your testimony which certainly demonstrates why Smithville is doing so well and why this committee needs to pay attention to testimony such as yours to ensure that small towns all over America can remain viable. And I think it's particularly important to note that the road system is the only transportation system available to your community like many in America which at time had rail service and today many of the big cities have commercial air which we in rural America help support.

Mr. Chairman, you may not be aware of it but on the aviation committee we learned last month that the city of Los Angeles now intends to try to take the \$3 tax that Congress allowed them to pass on the ticket to use for airport improvement. Now the city of Los Angeles wants to take that \$3 tax, passenger facility charge as it's called, to fund highways and water systems and no telling what else they'd want to do in California. But if we let them get away with it other states will want to do it and it's wrong because we in rural America are forced to go to the big cities to get on an airplane.

It points out why transportation is so important and why this committee has to look at the diversity of the modes of transportation because what works in Houston or Chicago probably won't work in Smithville and other towns of that size. So I think and your testimony demonstrates why Smithville is one of the leading small towns in America.

David, I wanted to ask you, in your capacity as president of the Community Transportation Association or rather the Capital Area Rural Transportation System, in that capacity you deal with transportation in more than just Bastrop County, isn't that true.

Mr. MARSH. Yes, sir. We operate in nine counties including Bastrop County.

Mr. LAUGHLIN. And one of those nine counties is Hayes County, a neighboring county to the west of you. Isn't that correct?

Mr. MARSH. Yes, sir.

Mr. LAUGHLIN. Are you familiar with the transit project the city of San Marcos in Hayes County has which I've not only had a number of telephone calls and letters but also have been there and met with the people, are you familiar with that project?

Mr. MARSH. Yes, sir. That's one of our projects. We have a pending section 3 grant for the purchase of the start up equipment for that project.

Mr. LAUGHLIN. Now, from my meetings with some of the elected people there in the community and the business leadership, I've been informed there has been substantial delay in the start up of that system. Can you explain why that has occurred?

Mr. MARSH. Well, as you know Congressman, the competition for section 3 funds is rather fierce and in the last session, even though section 3 funds were increased significantly, and at the expense, I might add, of a 15 percent reduction in formula funds, 105 percent of the money set aside for section 3 was earmarked. For that reason San Marcos was not funded. We feel confident that in future authorizations it will receive funding.

Mr. LAUGHLIN. Well both the mayor and city manager of San Marcos have been in my office here in Washington to discuss this

project and, as I understand it, has envisioned the use of rubber tired trolleys which has presented a problem because they are not busses. My suggestion was they just call them busses because they've got rubber tires. But can you explain why that has been a problem?

Mr. MARSH. Yes, sir. A recent obstacle we encountered was under the stimulus package. San Marcos was one of the ready-to-go-projects and they were getting all the i's dotted and the t's crossed and they got a directive from the headquarters office in D.C. that indicated that rubber tired trolleys weren't eligible for section 3 assistance, which was news to both them and me. The San Marcos system is a three-year project that the city council appointed committee feels very strongly requires trolleys to be successful. So that is a current obstacle or perhaps a future obstacle for that project.

Mr. LAUGHLIN. Isn't it true that in other areas of Texas we already have the rubber tired trolley in place in a system that is functioning, operating, providing service and using alternative fuels to help clean up the environment. Can you touch on that.

Mr. MARSH. Yes, sir. The San Marcos system was modeled largely after successful systems in the cities of Lufkin and Huntsville, Texas. Other areas of East Texas are also undergoing studies that will operate similar systems.

Mr. LAUGHLIN. And do you consider the use of the rubber tired trolleys, and I'd like to just call them rubber tired busses, critical to the success of your transit system in San Marcos?

Mr. MARSH. As currently designed, yes sir, the trolleys are critical for the success of that project.

Mr. LAUGHLIN. Mr. Chairman, in view of that I'd certainly request your assistance and help to correct this maltreatment of towns this size in rural America because it may happen to you.

Mr. RAHALL. Gentlemen, the suggestions are worthy of further consideration.

Mr. LAUGHLIN. That's all I need, Mr. Chairman.

Mr. MARSH. Can I say one more thing, Congressman.

Mr. RAHALL. Yes.

Mr. MARSH. I apologize to the committee, but every time you get two Texans in a room they argue about universities. Now, Congressman Laughlin—

Mr. RAHALL. You better watch it, there may be more than two.

Mr. MARSH. Congressman Laughlin can't lose because he can identify himself with both the University on the Colorado and the one on the Brazos. And I'd like to say for the record that my daughter went to A&M two years and is finishing her education up the road.

Mr. LAUGHLIN. Let me assure the gentleman from Bastrop County, I do claim both universities.

Mr. MARSH. I know, I know you do. You are on safe ground. Thank you.

Mr. LAUGHLIN. David, we thank you and for your leadership particularly in the rural transit area.

Mr. MARSH. Yes, sir.

Mr. LAUGHLIN. Thank you, Mr. Chairman, that's all I have.

Mr. RAHALL. The gentleman from California, Mr. Hamburg.

Mr. HAMBURG. No.

Mr. RAHALL. Gentleman, thank you for your testimony.

Mr. MARSH. Thank you.

Mr. RAHALL. Our next witness is Mr. Larry Dahms, the executive director of the Metropolitan Transportation Commission, San Francisco Bay Area. Mr. Dahms, we welcome you to the subcommittee. We do have your written testimony and it will be made a part of the record as if actually read at this point. You may proceed as you desire.

TESTIMONY OF LARRY DAHMS, EXECUTIVE DIRECTOR, METROPOLITAN TRANSPORTATION COMMISSION, SAN FRANCISCO BAY AREA

Mr. DAHMS. Thank you, Chairman Rahall. I am pleased to see Mr. Hamburg here. After the reference to California, I need a little help on the Committee I think. You have been exceedingly patient with the long series of testimony without any breaks, so I think I will just paraphrase the written testimony that has been presented to you. The testimony in its entirety deals with four subjects, some examples of the positive impacts of the ISTEA legislation in California and the San Francisco Bay area, observations regarding some of the transition difficulties, a few comments on the U.S. DOT proposed rulemaking that is now on the street, and finally some reflection upon the plethora of professional activity that is taking place around the country which I believe will over time reinforce the policies that came out of ISTEA.

In the San Francisco Bay area we have 100 cities, 9 counties, several ports, over 20 transit operators, and a number of Government agencies to do business with in an effort to make the metropolitan transportation system work. And whether it works well or not well all comes down to one word, and that is partnership. And certainly ISTEA provided the impetus for us to reinforce that partnership. One month after the bill was signed by the President, we essentially recreated the partnership of 36 agencies and they in turn adopted a jumpstart program in order to show on the street performance as quickly as we could after the new bill. I have listed in my testimony several examples, but I'll just note two.

One is we have used ISTEA money already to introduce in our region a freeway service patrol program. That is tow-trucks on the freeways to move the fender benders out of the way or the flat tires out of the way or to take care of someone who has run out of gas or something like that. Believe me that has been a very popular program. On the transit side, we have advanced our ticketing program. The Bay Area Rapid Transit District ticketing is similar to that here in Washington Metro. These tickets cannot be used on the busses yet. We now with ISTEA funds are advancing a program to be introduced this month by two bus operators. The rail tickets will be used on the bus.

In addition to the 36 agency partnership that we introduced with ISTEA, we also have added a blue ribbon advisory council bringing together a broad array of interests that were not previously assembled, including academic and research professionals, environmentalists, business leaders, community activists. A second body, a freight advisory council, provides the forum for a focused response to inter-modal provisions of ISTEA. By these and related ac-

tivities, we hope to bridge the trust gap that festers because so many interests affected by transportation decisions have been on the outside looking in. Now they bring new demands to the process, demands that are hard to fill. But with inclusion comes insight as we address the planning factors defined by ISTEA and hopefully the opportunity to build a broader base of support for needed transportation programs and funding.

The National Highway System has not been mentioned much here today because your focus today has been on transit, but we do want to borrow from the strengths of the National Highway System and bring it to our metropolitan transportation system and that is just the systematic discipline that is required. So we refer to that.

I note in particular one of the partnerships that we have with the State Department of Transportation and with the California Highway Patrol. We will be launching a new Jump-Start project to develop a management plan for that metropolitan transportation system.

The delegation that came from ISTEA had a notable impact on our region and the first test came last summer when we allocated ISTEA monies to finance over 200 projects in the San Francisco Bay area. What we did was fund an array of relatively small but cost effective projects and most of our partners have seen that as being quite responsive to their public need, more so than had we invested it in one of our more expensive interchanges. I might note that I think you may be hearing different kinds of testimony from other people, but in our area the state and the MPO are working very much in harmony to the point to which we jointly supported the State legislation that was required to reconcile the formula allocations from ISTEA with the formula allocations that we had previously in the State law. Secondly, in that same legislation, we were able to take State funds and use them as match for non, off-state system projects. You heard from one of the panels earlier the concern that the State would match the highway projects in some of the States but not the transit. In our case the new legislation made it possible to fund, that is, provide local match for transit projects, for local arterials, and other projects. So that was quite helpful.

In the transition, you've heard today from others and I would repeat that the lack of guidelines, regulations so far has led to a sea of confusion, but those rules now are about to close. In May the comment period ends. That problem should be mitigated soon. You've also heard some players that have been disappointed with the ISTEA allocations, that perhaps they had more funding before than they have now. I think that too will be mitigated soon. First the ISTEA authorization in some cases increases gradually. Second, if the gap can be closed between authorization and appropriation, that will help. And finally, I believe as the revised allocation process is allowed to mature and a clearer picture is available to who is doing what then many of the first year so called losers probably will become second phase and continuing winners.

And finally, some are observing that new programs such as enhancements, surface transportation program and the congestion management/air quality program are not yet being spent. But this

should not be a surprise to anyone. After all, the transportation improvement program is the project pipeline for projects and much like the movement of a battleship the TIP direction cannot be changed suddenly. In the case of our region, the first ISTEA allocation decisions were made last July, July 1992, the air quality conformity analysis was concluded two months later in September and the Federal approval of that TIP did not occur until February of 1993. As a result only now are projects eligible to move ahead.

I'll skip over a couple of points. We do have some comments on the U.S. rulemaking in the testimony. I would only say that one of the more surprising things about the rule making that in both the State planning, the State planning regulation and in the metro planning regulation there is a surprising void and that is the National Highway System does not seem to be referred to in the State planning guidelines and the metropolitan transportation system gets little notice in the metro guidelines and we believe that the focus of those two systems certainly has to be acknowledged in the planning. Aside from that and a couple of other comments we have in our testimony, we do believe that the rules that are being proposed by U.S. DOT are quite consistent with the spirit of ISTEA as written by Congress.

Let me just conclude by saying that the thrust of ISTEA's new thinking has been the subject of dozens of conferences hosted by the Transportation Research Board, the IVHS America, U.S. DOT, every uni-modal and multi-modal association here in Washington and by their peers throughout the 50 states. Perhaps ISTEA's resurrection of R&D as a legitimate transportation endeavor best epitomizes the spirit of adventure that has been turned loose. We have moved from a sense of despair where congestion has been mounting, bridges have been failing, and mobility seemed to be on the decline in the national interest to a new mood of hope, optimism, and even confidence. Programs like IVHS America excite the public because of the American infatuation with new technology, but it excites the transportation profession as well because it puts in bold relief the concept that the transport system must be seen as such, an integrated system. To work well it must be planned, financed, built, and operated as a system. At IVHS America this is being recognized. There must be a client with a system if there is to be a productive application of new technology. ISTEA is the catalyst for the systematic approach and for the partnership commitment that are both essential ingredients of success. We'd like to applaud your committee for this far-sighted legislation and thank you for this early review of its development.

Mr. RAHALL. Thank you very much, Mr. Dahms. The California Department of Transportation, CALTRAN, seems to have moved more expeditiously than other State DOTs in complying with the new requirements of ISTEA. I know that the Chairman of our full committee and the major sponsor of ISTEA is from the great State of California, but for those States that don't have such a leadership, such an individual in leadership role how do you suggest that we at the Federal level go about helping to replicate what you have done in California among other States?

Mr. DAHMS. Well first, let me acknowledge that we were given a big boost by the fact that when we kicked off our implementation

of ISTEA, Mr. Mineta was there immediately to help us. Doctor Larsen from the Federal Highway Administration was there immediately to help us. Jim Van Lobensels our CALTRAN's director was there to help. So we got off to a fast start with that help.

I think it does take the realization that each metropolitan area has some advantage to be gained by this flexible funding, to chart its own course. I think my first recommendation is to each metro community to see the opportunity and then put a little pressure on the State. In some cases the States are not willing to readily relinquish what they have seen has been their past responsibilities to the metropolitan areas.

Mr. RAHALL. Thank you. I recognize the gentleman from California.

Mr. BAKER. Thank you, Mr. Chairman, and thank you Mr. Dahms.

We've had a long working relationship in California including his support of area transit, multi-modal transportation and 108, 111 which got us off the ground with a 9 cent additional gas tax for rail and roads. So I appreciate Mr. Dahms and the work he does. You were mentioning getting the State coordinated in, I'm not sure I follow that. Is the CTC in CALTRANs not on board?

Mr. DAHMS. No, Mr. Rahall was asking or was observing that in my testimony I was testifying to the fact that our State has been very supportive of our situation and as a result I think that ISTEA has been good news for us in a way that it hasn't been in some other States because our State has been so supportive and Mr. Rahall was then asking questions about, how do we get some of these other states to be encouraged to be as forward thinking.

Mr. BAKER. In earlier hearings, the Chairman has brought out some problems and the vice chairman of this committee some problems with some of our mandates in ISTEA, such as the percentage of rubber that has to be in asphalt. Is there anything in ISTEA currently that would prevent California or specifically the Bay area from receiving funds. Are there any mandates we should be looking at to determine how to improve them?

Mr. DAHMS. I don't see any real impediments. The delegation is pretty clear. I think that the bureaucracy has got to catch up with the delegation. The delegation is there with one hand and then the movement is a little slower with the other. In my testimony I referred to the point that we adopted our first set of projects to be allocated from ISTEA in July. We completed our air quality conformity analysis by September and then it took until February for the tip to be approved. To me that's like spending four months building the house and six months inspecting it. And I think that's just reflective of the old processes not having yet been streamlined. But as we move ahead, it's our job to keep the pressure on those that we deal with at the State and Federal level so that they'll streamline their processes to match up with what I think is the spirit of ISTEA.

Mr. BAKER. Mayor Koch once said if I'd only known what I was voting on in Congress to hobble the cities, I wouldn't have voted for them. You see the impact of regulation from the Bay area and transportation. I would be very helpful if you'd let us know what we have done to create this six months of paperwork for the four-

month building job. I know the Chairman shares my sentiments and will work with me to try and make the regulations better for the locals and the States. The rubber was just one example—putting rubber in the asphalt—but the asphalt people are resisting it and some States don't have enough rubber tires to satisfy the regulation.

Mr. DAHMS. I paraphrased my testimony but I have an example in my testimony that I skipped over. The regulations I think can be applauded for substituting a corridor type analysis, multi-modal corridor analysis for what has been the Federal Transit Administration's alternative analysis. That's a nice long step in the right direction. However, the responsibility for deciding what that scope should be is not defined and I think that could invite some mischief. We could get into essentially an analytical gridlock if we don't assign responsibility for who decides the scope of these analyses so we can keep them within some reasonable levels and we can proceed in some reasonable fashion. If I were to use an example, we're not very happy with the fact that a significant analysis that we did relative to the San Francisco BART to the airport was a four-year task and now as we are moving into preliminary engineering essentially the environmental work will repeat much of what was done in that four-year period. That's the sort of thing that in this new regulation we hope to avoid, that we don't do it thoroughly once and then have to do it thoroughly again.

Mr. BAKER. On the Benicia Bridge projects which you and I are working on, a bill I carried in three years during the EIR, the cost only went up to 15 percent uncompounded, 5 percent a year and we just shrugged that off, that's fine, that's what you're supposed to do. That's \$30 million of the taxpayers' money increased in a \$200 million project and we could do that in one year. So I think we have to ask the Federal Government and the states for a little laxity in these projects so that when you have four years worth of research done we could probably do the EIR in one year.

Mr. DAHMS. Again, I think that's why that corridor analysis regulation is a critical one to watch.

Mr. BAKER. I'm using more than my time Larry, and I appreciate your being here. Some of us are going to push to fund more of the ISTEA than is now funded using the sequestered gas tax revenue, but there is a war on back here as to whether that's already been obligated or whether that's being used for cash flow for the deficit, but we'd sure like to fully fund ISTEA to make your job a little better so you can plan further into the future. Thank you for being here today.

Mr. RAHALL. The gentleman from California, Mr. Hamburg.

Mr. HAMBURG. Yes, I too thank you very much for being here today and I certainly share the thoughts of my colleague from California regarding full funding of ISTEA. I was really glad to hear the upbeat nature of your comments about ISTEA and it's good to hear we're making progress. We still have a long way to go. On Friday I had to make a trip from San Francisco to Vallejo, a trip that usually involves about 35 minutes took me about an hour and a half at four in the afternoon and you know there are obviously other parts of my district that are still severely impacted and where we need it seems to me to take kind of an ecosystem ap-

proach to our transportation problems where we're trying now to do it with our environmental issues.

There are three counties that I represent that are part of the MTC and I just wanted to ask you to comment on what improvements you see in the way MTC functions particularly with respect to these more outlying counties that aren't solidly in the Bay area, Napa, Sonoma, I represent Northern Solano. Has ISTEA improved in any way the workings of the MTC especially with respect to those areas.

Mr. DAHMS. I think it has been very helpful in several ways, and especially if you join the ISTEA legislation with the California Blueprint legislation that Mr. Baker referred to because the California Blueprint legislation created the congestion management agencies, one for each of the counties. That makes it possible for us to work essentially at a county level instead of attempting to work with all 100 cities and nine counties. So when we allocated the monies that I referred to earlier last July, the first \$200 million of ISTEA funds, we were able to defer to a considerable degree to those countrywide agencies.

Interestingly enough, some local officials were not too happy about the ISTEA legislation before it passed because they were fearful they were not going to have the kind of flexibility they had with the Federal Aid Urban program or the Federal Aid secondary program before. We were able to demonstrate in the allocations that took place last summer that we could be responsive to their needs. The list of projects for Sonoma County, as an example from the first allocation, included \$16 million worth of projects. The wide range of projects ranged from widening arterials to buying clean fuel busses. In terms of MTC being responsive to Sonoma, to its real needs.

A smaller thing that we were able to do is equally important. One problem with the California law when it created congestion management agencies, and placed some requirements on them; it did not provide the planning funds necessary for them to actually meet the requirements. With a small allocation from ISTEA funds we were able to help them in that regard.

We've been able to demonstrate, especially with the help from the flexibility and delegation that has provided ISTEA, to make the kind of connection—a much better connection—with the counties than we have before.

Mr. HAMBURG. Well if you are keeping Pete Foppiano happy way up there in Healsburg and he feels like his needs are being met then your reach is pretty good, you are being pretty inclusive in the way funds are being distributed and decisions are being made.

Mr. DAHMS. He has one of the 16 votes on my commission, so I'd better keep him happy.

Mr. HAMBURG. Same here. Well thank you very much for coming today.

Mr. DAHMS. Thank you.

Mr. RAHALL. Thank you very much, Mr. Dahms.

Our next panel is composed of Mr. Robert Molofsky, legislative director, Amalgamated Transit Union; and Mr. James M. Brunkenhoefer, the national legislative director of the United Transportation Union. We'll also add to the panel our last witness

Ms. Harriet Parcels, the project director, Campaign for the New Transportation Priorities. I understand she is accompanied by Mr. Ross Capon, executive director, National Association of Railroad Passengers and a member of the Steering Committee, the Campaign for New Transportation Priorities.

Lady and gentlemen, we welcome you to the subcommittee. We have your prepared testimony which will be made a part of the record. You may proceed as you desire.

TESTIMONY OF ROBERT MOLOFSKY, LEGISLATIVE DIRECTOR, AMALGAMATED TRANSIT UNION ON BEHALF OF JIM LASALA, ATU PRESIDENT; JAMES M. BRUNKENHOEFER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION; AND HARRIET PARCELLS, PROJECT DIRECTOR, CAMPAIGN FOR NEW TRANSPORTATION PRIORITIES, ACCOMPANIED BY ROSS CAPON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF RAILROAD PASSENGERS AND MEMBER OF STEERING COMMITTEE, CAMPAIGN FOR NEW TRANSPORTATION PRIORITIES

Mr. MOLOFSKY. Thank you, Mr. Chairman. I'm here on behalf of my president of the Amalgamated Transit Unit, Jim LaSala. Our union, as you know, represents over 160,000 workers in the mass transit over the road and school bus industries and we're pleased to have the opportunity to testify about ISTE A bill and our efforts to implement it and make it work for America. I would also first like to congratulate you on assuming the chairmanship of the committee and recognize again the leadership of Chairman Mineta and Congressman Shuster and others on the committee in shaping and fashioning what is universally acclaimed as landmark transportation legislation.

Among its unique features, we believe the ISTE A program is notable for providing extraordinary flexibility at the State and local level with respect to project choices and decisions, increasing funding for both the highway and mass transit programs, and expanding the design and funding commitments to our rural communities, and providing new capital and operating assistance through the section 18 program to the inner-city bus industry.

With respect to the latter program, I would like to bring to this committee's attention the tentative settlement reached on April 20 between our unit and Greyhound resolving our three-year labor dispute. Clearly those negotiations in the ensuing strike was the most difficult period for our members, their families, and the riding public. We believe that the new six-year contract will provide much needed stability to the industry and opportunities for substantial numbers of our striking employees and members to return to work under improved conditions. Perhaps most significantly the contract contains provisions providing for a new more cooperative approach towards labor relations which will serve not only the employee's interest but the company's and public as well. And we recognize that in the weeks ahead this committee will be looking at the Workplace Fairness Act of 1993 and urge again that it be reported out of this committee. We'll work hard to ensure its passage ultimately in the Congress in both the House and the Senate.

The ISTEA bill of course recognizes the important contribution transit labor continues to play in building, maintaining, and operating our Nation's transportation systems. In this regard the retention of the section 13(c) labor protection program, the maintenance of Davis-Bacon provisions reflect this approach. Especially important, too, were the new limitations set through the DOT certification process on Federal intervention with respect to the State and local decisions regarding the choice of public or private providers of transit service.

Since the passage of ISTEA, our union has undertaken a series of programs to assist in its implementation. We have conducted a series of National training and education programs for our officers and members in some 46 States. We are working with the America APTA, with the Surface Transportation Policy Project, with the Campaign for New Transportation Priorities, and other groups to ensure that the final regulations implementing these programs carry out the act's mandate of affording transit labor and other groups a real opportunity to participate in the process, and we are now working with these and other groups in framing recommendations in response to the planning regulations which I think are at the heart of making the bill work and work well.

In this regard, in our experience membership on the MPOs is critical to ensuring that the flexibility provided by the bill becomes a reality and to this end we strongly recommend that transit agencies and transit employee union representatives be represented in all MPOs regardless of whether MPOs are reorganized or not. Far too many MPOs, including those in major urban areas, do not have these organizations as voting members. It makes no sense. We believe legislation to mandate this approach would be helpful to enhance local and regional decision making. Again through those coalitions at the State and local level we are working to increase State funding for transportation so that the Federal and State programs can work well together.

And thirdly, we are continuing to work with the transit grant recipients, the DOL, and the FTA to ensure the timely and effective processing of the section 13(c) requirements. We continue to place priority on moving projects as expeditiously as possible. Unfortunately, we continue to experience difficulties with certain projects arising from FTA interference with the Department of Labor's certification and case processing. We are hopeful that those issues can be resolved at the agency level.

There are several issue areas we'd like to bring to the committee's attention as we look to the future. First, while the committee provided historic funding for the highway and transit program, budget and other constraints continue to produce annual appropriation levels far lower for mass transit than authorized. This is especially serious in view of the mounting financial burdens placed on State and local Governments and other, and all transit grant recipients arising from requirements under the ADA, the Clean Air Act, as well as the new drug and alcohol testing requirements.

I was pleased to hear testimony of others appearing before you this morning and I know last week that these are urgent needs which we all support and urgent goals that we all support, but we have to move forward in finding funding to pay for these programs.

We have separately submitted to this committee a transportation labor policy brief outlining our concerns and in that we call for the creation of a transit safety service and standard fund. The target increases in Federal operating assistance to help fund the operational expenses imposed by these vital but costly Federal mandates. Current appropriated levels for operating assistance remain well below those authorized by the legislation. The new fund would essentially bring mass transit spending up to the level set by your committee, but would dedicate the funds largely to meet the new federally imposed costs. It makes no sense to us to devote increased resources to the capital program if insufficient funds remain to ensure the necessary maintenance and operation of these vital services. We of course join with APTA and other groups appearing before you and calling for full funding of the entire Federal Transit Program. It's critical to the effective implementation of the law and necessary to correct years of funding shortfalls. Particular attention should be placed in remedying the recent reductions in the section 9 formula program.

Finally, we again call for further increases approaching 7 cents per gallon in the gas tax dedicated to the Federal Transit Program. In the near term we support the Administration's proposal to extend it two and a half cents beyond 1995 with at least 20 percent of this tax earmarked for the mass transit account of the Highway Trust Fund.

In closing we want to also join with our counterparts in the industry and express support for APTA's presentation and justification of America's new surface transportation network. It will truly aid the Congress, the committee, and the Department of Transportation in assuring that the intermodal vision of the 1991 legislation is properly realized. We thank you again for the opportunity to offer our ideas and views and look forward to working with you, as we have always, as we strive together to meet the transit challenges of the next century. Thank you very much.

Mr. RAHALL. Thank you, Bob.

Mr. BRUNKENHOEFER. Thank you, Mr. Chairman for being here. I know not everybody is excited to listen to me talk because I hate to listen to myself so, if you don't mind, I'll just submit mine for the record and cover a few other things.

Mr. RAHALL. I beg your pardon.

Mr. BRUNKENHOEFER. I'm appearing on behalf of President Dobo today. We've got a problem that was not outlined in my testimony that involves the new emerging commuter rail operations. We tried to learn a little something from a group called the United Mine Workers of America. They have a health care problem because a number of their members are coming out, a number of the retirees are not funded because the people that are mining coal aren't paying into the retirement fund. Okay. We're headed down the same track.

As we have these emerging new transit districts that are being formed and funded to do rail operations, they are buying the right-of-ways from freight railroads. They are going out and buying heavy horsepower engines, not the type that Mr. Molofsky represents, but commuter rails. They contend that they don't come under the Railroad Retirement Act. They contend they don't come

under the Federal Employees Liability Act. They contend they don't come under the Interstate Commerce Act. They contend they don't come under the Federal Railroad Administration. Now when we get into a bidding process and Amtrak comes along and wants to bid for that operation, Amtrak is under all of our traditional railroad legislation that we have had in place for years, but as the emerging transit systems come on-line, they contend that if they get someone other than Amtrak to bid that property as an operator and operate those trains that they then don't come under the Railroad Retirement and all the other acts.

What we're going to end up with is we're going to have people who are not going to be paying into the railroad retirement system and we already have now today three retirees for every worker. If we don't capture these new emerging transit districts and bring them in as what I think they really are which is a railroad and we don't consider them to be an interstate railroad then we are going to lose that revenue to our retirement system further weakening and following the same problem that we have that's in effect today for our brothers in the mine workers.

And while you are doing the technical corrections on ISTEA, if they are going to get the money to run a railroad, then let's make them a railroad. They are doing things like at night they are becoming a freight railroad but they're not a railroad. They're just following freight around. And so we need some correction to bring in these new emerging systems. I just got a call from our people in Florida where we have a subsidiary, the Burlington Northern who is bidding against Amtrak for that service, but Burlington Northern is saying they can do it cheaper because they're not really Burlington Northern, they're somebody else and they are going to go down and run this railroad and not pay railroad retirement, but if Amtrak who is a railroad comes in and does it, it's an unfair disadvantage. There is precedent for that contained in the Rail Passenger Service Act, sections 508 to 510, 511 and that's contained in 45 U.S.C. 588, 590, and 591 where we did very similar type legislation of where we took those railroads that were then under Conrail or under Penn Central et cetera and brought them into either Septa, Metro North or Amtrak.

And so what we would like to be able to have in that area is something to control that flow as these properties move from being freight properties to being passenger properties. Also we support all of the testimony provided here today by the Amalgamated Transit Union and I am lucky enough to have probably one of the largest emerging systems that we represent which is Los Angeles. I will be glad to answer any questions.

Ms. PARCELLS. Thank you, Mr. Chairman and members of the committee for the opportunity to present the views of the Campaign for New Transportation Priorities on implementation of ISTEA. My name is Harriet Parcells and I am the project director of CNTP which is a coalition of 48 national environmental, labor, and consumer groups from across the country that are working together for a more balanced and energy efficient transportation system. Accompanying me today is Ross Capon who is the executive director of the National Association of Railroad Passengers, the or-

ganization which hosts the campaign and is a member of its steering committee.

Echoing what you have heard from other witnesses, we would like to express first of all our strong support for the ISTEA legislation and our appreciation to the members of the Public Works Committee, the Chairman and the full Committee Chairman, Chairman Mineta, whose vision, dedication, and long hours made possible its enactment. It is truly a watershed transportation bill that provides the country with the opportunities and framework needed to create a more integrated and clean National Transportation System.

With the perspective of slightly more than one year since ISTEA's enactment, we see evidence of positive changes occurring. On the other hand we are troubled by a number of things that we see taking place. The reality of ISTEA seems to be falling short of its promise and I'd like to just focus on some of those issues with you this afternoon. First, the issue of the actual funding of transit versus ISTEA's authorized levels. Again, this has been brought up by other witnesses and while we are aware that the actual funding of mass transit is beyond the jurisdiction of this committee, we wanted to join in the concerns that have been raised about the shortfall in transit funding that has occurred. ISTEA authorized \$5.2 billion for mass transit for fiscal year 1993, but the actual appropriations were 37 percent less or \$3.8 billion. Transit systems face substantial costs to meet the requirements of the Americans with Disabilities Act of 1990 and to comply with the Clean Air Act amendments of 1990. Even ISTEA's increased funding levels for transit do not adequately address transit's capital and operating needs. Full funding of the ISTEA's funding levels for transit is essential.

Second, I'd like to focus on our concerns about the failure of states to adequately use the flexible funding programs for transit and for other modes. ISTEA's flexible funding programs are a unique, crucial part of the law. The Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Programs (CMAQ) are two key flexible funding programs. There was great expectation that a significant portion of these program funds would be used to fund clean, energy efficient alternatives to driving, projects we believe are crucial to helping non-attainment regions of the country achieve the healthy air standards required by the Clean Air Act Amendments. Of some \$10.4 billion in flexible funding that was available in Fiscal Year 1992, only \$302 million was made available for use on transit projects. And while \$300 million is an important source of funding for transit, it is clearly only a small fraction of the potential funding that could have been flexed to transit or other clean modes.

Many States reached their highway obligation ceilings in fiscal year 1992 without obligating much or in some cases any CMAQ or STP funds. Nearly 35 percent of all STP funds and nearly 60 percent of the available CMAQ funds were left unobligated in fiscal year 1992 because States met their highway obligations ceilings through other programs, such as the NHS, the Bridge Program and other more traditional programs. Of 39 States with one or more nonattainment areas for ozone and/or carbon monoxide, nine failed

to obligate any CMAQ funds in fiscal year 1992. The States of Pennsylvania, Michigan, and Louisiana, all with significant air quality problems, left 98 percent of their CMAQ funds unobligated. And while States obligated at least some of their STP funds, what is disturbing to us is that major metropolitan areas throughout the country did not receive any STP funds due to them in fiscal year 1992. The States of Arkansas, Connecticut, Iowa, Nevada, and New Hampshire failed to provide any of the larger urbanized areas, those with population over 200,000 in their State, with any STP funds in that fiscal year.

The failure of States to take advantage of ISTEA's flexible funding programs we believe undercuts a fundamental part of the legislation and keeps funds flowing to traditional highway needs or "business as usual." And most disturbing is the fact that the States seem to be ignoring the needs of many of the country's major metropolitan areas and depriving them of funds needed to address the congestion, air quality and other problems that they face.

We recognize that these figures represent the first year of ISTEA in which all parties were learning new program and policies that are part of ISTEA and we are hopeful that future years the States will make greater use of these flexible funding programs, but we urge the committee to monitor this and ensure that in future years this does not become a pattern and that the States in fact do take greater advantage of the flexible funding programs and that they provide the larger urbanized areas with their fair share of these funds.

As a coalition that cares about another aspect of public transportation, the Nation's passenger railroad system, we continue to believe that the future inclusion of inter-city passenger rail eligibility under ISTEA's flexible programs would strengthen ISTEA and provide States with an important additional means of alleviating congestion and air pollution and creating a more energy efficient transport network. North Carolina's DOT was firmly rebuffed by Federal Highway, by FHWA when it applied for \$9.8 million under the STP program to make improvements to the rail service along the congested, high profile Raleigh to Charlotte corridor, even though this corridor was designated as one of ISTEA's section 1010 high speed rail corridors. We hope the committee can look towards a more open interpretation of the STP program and encourage DOT to do so, so that worthy projects such as this and States that are looking to their inter-city rail system to help alleviate highway congestion can be supported and these projects can be funded. Let me say on the other hand that we are encouraged to see many States are beginning to use some of their enhancement monies to rehabilitate and restore historic railroad stations which is an eligible activity under the enhancements program and many examples could be cited in many states.

ISTEA placed a welcome new emphasis on transit research and planning and for the first time a fixed percent, 3 percent, of the FTA funding is earmarked for transit research and planning, yet as we look at the appropriations for fiscal years 1992 and 1993 we see that many of the transit research and planning programs got far less than the ISTEA authorized levels and again this is an area of concern. As you know transit authorities across the country are

stretched far too thin trying to meet their basic capital and operating needs to be able to address longer range research and planning issues that the funds for the National program are intended to support. The inadequate transit planning and research funds to the MPOs hinders their ability to address important new mandates under ISTEA.

Let me turn to public participation in the transportation planning process. Overlaying ISTEA's new funding programs is a strengthened, more comprehensive regional planning process, a requirement for the first time for statewide planning and a greatly enhanced public participation process. We greatly support these aspects of the legislation and thank the members of the committee and the Chairman of the full committee for their understanding and work to support these and get these into the legislation. From discussions we have had with citizen groups around the country in recent months, however, there appears to be an overriding sense that meaningful opportunity for public involvement has been far less than was expected and needs substantial improvement. Philadelphia's MPO for example gave the public just one week to comment on its first tip and no opportunity to comment on its conformity analysis with the Clean Air Act Amendments. Here in Washington, D.C. a public hearing was held only two weeks prior to the dates scheduled for the TIP adoption. Promising developments are taking place and again we recognize that this was the first year of implementation. In the Washington, D.C. region, for example, a new citizens advisory committee to the MPO has been formed and we believe this should provide for much improved public participation.

Let me just in closing briefly raise three other issues. Number one, we urge the committee to consider the designation of a strategic surface transportation network as an alternative to the more narrowly defined concept of a National Highway System. We believe that the mobility, economic competitiveness, environmental and energy challenges we face in the 1990s and the 21st Century call for this more inclusive concept of what constitutes the Nation's vital transportation system and we endorse the concept that APTA has presented to the committee earlier.

Number two is threats to the freeze on the longer combination vehicles. We strongly endorse the freeze on the operation of longer combination vehicles that was enacted in ISTEA. We believe it's in the interest of public safety, the Nation's infrastructure, environmental quality, a healthy freight railroad systems. We are concerned about the pressures that negotiations on the North American Free Trade Agreement may create to weaken the freeze, we urge the committee to oppose any such efforts and we thank the committee members who have voiced their concerns on this issue.

And finally in closing, I'd just like to raise the issue of the National Commission on Intermodalism. We support ISTEA's increased emphasis on creating an intermodal National Transportation System and we support this National Commission that was established. However, no funding has been provided for the National Commission. This really hinders its ability to do the work that its members are very dedicated to carry out and we urge that

you look into this and see if funding on the order of \$1 million or \$1.5 million could be provided to the National Commission.

We thank you, Mr. Chairman, for holding these important hearings on how ISTEA is being implemented and for the opportunity to be here today.

Mr. RAHALL. Thank you for your testimony.

Bob, let me ask you the first question. I've always been rather suspicious of data that has been highlighted by the Reagan and Bush Administrations in the past which purported to show that transit operating assistance was not good investment of Federal funds. Has the ATU done any analysis of the relative efficiency of transit labor, efficiency rather of transit labor over the years? For example, in the area of wage rates adjusted for inflation.

Mr. MOLOFSKY. Let me make two remarks about that. First, productivity in our industry is measured not so much by the wage rates but by the mileage in service that's put out and the passengers that ride the busses and those are factors that are generally beyond the employee's control. Management, hopefully working with us, decides what route service to put out, when to run them, how many busses to put out in rush hour, when traffic is slower and those impact significantly on productivity.

With respect to operating assistance and wage rates, we have long argued that any illusion to the notion that it underwrites inflated wage rates in our industry is really a diversion and not true. We have done some recent trend analysis since operating assistance started for example. It began, as you know, in 1975 and for the 1975 to 1980 period, the first five years when operating assistance was in place wage rates in the industry grew as they do generally for everybody over time. But when you adjust it for inflation overall, for all transit workers in the public transit industry, during that five year period when adjusted for inflation, they experienced a minus 5.7 percent decrease.

Similarly, in the 1980 to 1993 period, the more recent era of the Reagan-Bush years and now moving forward, we broke it down into several categories to look at the experience. We did our surveys covering about 150,000 employees including all of our properties and the other major systems in the United States, including San Francisco, New York, and some of the others that are not directly represented by the ATU and for the 25 larger systems employing 800 or more workers, and this survey itself involved some 111,000 mass transit industry workers. If you look at the wage rates there, they gained but when adjusted for inflation it was in minus 3.4 percent decrease. For the next group we looked at 25 of the medium and large sized properties involving over 14,000 employees in the industry working for transit authorities with 200 to 800 workers and there too they improved. But again when adjusted for inflation, which is the real measure of wage gain, they experienced a negative 3.1 percent decrease. And in the 75 medium to small sized systems with 50 to 200 employees, there too the adjustment for inflation showed that they experienced a minus 2.5 percent decrease.

I make two other points on that. We also looked at the systems with 50 or less workers, the smaller systems in the rural areas of the country and fortunately for them and those workers who started far lower than the bigger cities in the larger properties the data

there showed a wage increase over time but when adjusted for inflation it was only a 1.1 percent increase and that record, and we're proud of our contracts, don't misunderstand, but we think we have been very dedicated to negotiating respectful contracts and efficient ones based on what the systems can provide in the face of our workers' needs. But let me give you how spotty that result is. In Huntington, West Virginia, for example, where wage rates went over the 13 year period from \$6.20 to 10.2, \$10.20, when adjusted for inflation they experienced a minus 8.4 percent decrease in wage rates. And in Charleston, West Virginia, for example, they went from 7 to 10.80, a 54 percent increase in wages but when adjusted for inflation a 13.6 percent decrease. And finally, in Altoona, Pennsylvania, a small system of 50 or less, the wage rates there went from \$6.60 in 1980 to a little over 11.80 an almost 80 percent increase, but when adjusted for inflation over that 13 year period the workers experienced only a .1 percent increase in their earning power over time.

So we think we have been very good in our stewardship, working hard for our members, but we cannot see any connection between operating assistance and wage rates. We think that these contracts have been fair and have been responsive to local needs as they have to our workers and we wanted to share that with you at this point. Thank you.

Mr. RAHALL. Thank you. Do you envision the transit safety service and standards fund as a long term solution to the underfunding of transit operating assistance?

Mr. MOLOFSKY. It can be. It can be whether there is a decision to implement it over the long term, it's a matter of what the long term costs of the program are. We think this committee has spoken well in arguing that operating assistance should go over a billion dollars a year. In the face of that, there are rising costs that will well exceed the \$230 million differential between what is now appropriated and the 1.1 billion. There are significant upfront costs that every transit agency is going to have to face in the next two to three year period to implement their drug and alcohol testing, to deal with the ADA requirements, and amove forward on Clean Air. The ADA act plans, for example, were due last year. They have to be implemented over a five year period. That represents the largest increase in operating expenses for transit authorities. It is going to put significant pressures on them over the next five years to choose between the rightful goal of providing access and opportunity for all and balancing their ability to do that while maintaining service.

They can't do everything for everybody at all times with a shrinking amount, with a limited amount of money. So it may be helpful to the process to set a timeframe on this. We're prepared to talk about it but we think in order for these programs to work you need to focus more money on the operating end of the program and we think there are strong reasons for doing it in a way that gives confidence to the committee and the Congress that the money will be used for purposes that we all believe in, for safety, for the ADA type of service operations, and improving air quality. And we think that with all the arguments and discussions over the years about operating assistance and what its purpose is and who should

pay for it and how it should be raised and what it ends up getting used for, there should be no question. The Congress has spoken forcefully for these types of programs and I think it gives real weight to the debate and hopefully to the funding to improve those numbers in operating assistance and dedicated for those goals.

I think whether there is an out-year shutdown on it or not is something that can be discussed. But the needs are now, you can't move forward in any one of these areas without a substantial increase in funds. Operating assistance has been at 802 for years, six years and yet the demands on that funds have been enormous over time and they are rising for these programs and for other purposes. So that's our general response.

Mr. BRUNKENHOEFER. If I could just add something.

Mr. RAHALL. Certainly.

Mr. BRUNKENHOEFER. We went through the drug testing evolution a little earlier than other people. We were told early on that it was going to cost the carriers, it was going to cost them about \$35 to \$38 to do the test. It's cost them about 150 now by the time you put the random in, the selection into the computer, pull the person off the job, test them, have the supervisor there et cetera. We're now running to find a positive drug test in our industry in the mid \$80,000, that's how much drug testing cost it takes to find one positive. This is a new area that the transit side is just moving into and when you start looking at those kind of costs they are going to have to find the money some place.

Mr. RAHALL. Let me ask you about the concerns you raise in your testimony, which I share, and you are perfectly right there are striking parallels with the situation faced by those in the labor, I mean by those in the coal fields as well.

Mr. BRUNKENHOEFER. Those in Mingo County.

Mr. RAHALL. All over southern West Virginia. However, I'm not sure it's fixable in any type of technical amendments to ISTEA because this committee does not have jurisdiction over railway matters as you have noted. Is there something in this you see that somehow we can bring it under this committee's jurisdiction?

Mr. BRUNKENHOEFER. The only thing I can think of is if you create the legislation authorizing the money from the various funds which, he's more familiar with it than I am, to be used by transit districts or whoever to go into that type of operation. You are going to take highway dollars or you are going to take other dollars to go into the new mass transportation business. The only thing I'm suggesting is that would be some of the conditions because it really makes it unfair for Amtrak to get in, Amtrak who could do the service very ably because they actually are a railroad and claim to be a railroad, it makes it very difficult for them to come in. So all we're suggesting is an examination of is that if they are going to get the money to be a railroad then let them be a railroad.

Mr. RAHALL. So if I'm hearing you correctly, you are suggesting that we make it a condition before receiving these funds under this act that the recipient agree to come under the provisions of the Rail Labor Act.

Mr. BRUNKENHOEFER. Correct. The Railroad Retirement, Railway, the traditional railroad laws that we come under. Thank you.

Mr. RAHALL. Thank you. Ms. Parcels, let me ask you a couple of questions. It has been successfully argued that the use of the motor fuel tax revenue for transit purposes helps to reduce congestion in our urban areas. Do you believe that the use of these funds for inter-city passenger rail would significantly reduce congestion in our urban areas or would you use other arguments to justify such a use?

Ms. PARCELLS. I think that the use of gas tax funds for inter-city rail would contribute to a number of national goals as described in my testimony. In the case of North Carolina, they want to use it for an Amtrak line that parallels two heavily congested highways. And clearly the State is looking to rail to alleviate congestion. They see that as an important alternative. And I'm sure there are many other examples that could be pointed to in other parts of the country. So I think rail has a role for congestion relief, I also think it is a very energy efficient mode. As we work as a country to reduce our dependence on foreign oil and seek energy efficient alternatives using gas tax funds for rail contributes to reduced energy dependence and also it's a relatively clean mode and would contribute again as an alternative to driving to help with air pollution. So I think it contributes to a number of national goals.

Mr. CAPON. I just had one point, Mr. Chairman, and that is some of the highway congestion that the rail service could alleviate is the congestion associated with airports. To the extent that rail services are able to attract people out of congested airways and congested highways around those airports, that is another form of highway congestion alleviation that the inter-city trains can help perform.

Mr. RAHALL. Are you recommending any changes at the Federal level to ensure that ISTEA implementation results in improved public participation in a planning process.

Ms. PARCELLS. Well I guess we would like to see DOT issue regulations and we were very pleased to hear the Secretary is working to expedite the regulations. We know that they have been issued and we are working with other groups to comment on these proposed regulations. I think that's very important to give direction to the MPOs in terms of what is expected both in the planning and public participation. And I guess would like to see oversight of the committee as you are doing right now to be sure that as the law continues that it is being properly implemented. We're still early in the process and we see positive changes taking place in some areas. From what we saw the first year, we would ask the committee to continue to use its oversight and see that the public is being brought on in a timely fashion so they really can be part of the process as envisioned in ISTEA.

Mr. MOLOFSKY. Can I comment on that. You heard it a couple of times today, in order to get flexibility to work it has to be in the plan. If you are going to have transit get any of the money, shift it over from highways or vice versa, it has to be in the plan. There are two things in the regulations that we think are real problems. One, historically transit agencies have not been on an extraordinary number of MPOs in this country. You look at Philadelphia for example, SEPTA is not on the MPO. How are you going to have a voice for flexibility as an argument to be heard, maybe not to be ruled on, but at least to be heard if the leading transit authority

in the area is not on the MPO. I don't think the real question is who to choose among transit authorities or among unions or others to serve on these MPOs, the real issue is to make sure that you have a diverse range and don't let the States or the historic highway interests or others who have control over the MPOs reign until they ultimately get reorganized. That's the real frustration in getting flexibility to work.

The other issue is maybe a regulatory one, but if you look at the planning regulations at both the State and the MPO planning regulations, there is a very short amount of time made available in those regulations for interested parties to review them, the proposals. One of the gains in the ISTEA bill was the provisions in section 8 that required notification to a broad range of interest groups, both public and private as to the content of those plans with a reasonable opportunity for noticing comment. Twenty days to look at those kinds of comprehensive plans is grossly insufficient. You may over 20 days understand what is in them, but you wouldn't have sufficient time to influence any change, any outcome, any meetings with the members on the MPO or others to discuss modifications. And so it really makes a mockery of public input unless you afford 60, 90 days of opportunity to review the plans by outside groups with a view towards making recommendations for improvements.

Those are two areas that we would urge the committee to look at in any technical corrections bill, membership and timeframes for comment.

Mr. RAHALL. Thank you.

The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman.

Ms. Parcels, I have a question and I apologize to all of you for being out of the room much of the time you were testifying, but I had voters from the 14th Congressional District who get my immediate attention when they show up here. Ms. Parcels, when you were talking about the gas tax, I have a concern about any discussion of gas tax until I understand where you or anyone else is coming from because we in the rural part of America, particularly in the south and west, pay substantially more—let me rephrase, we drive substantially more miles per capita than people in the northern and I don't want to say northeast sector, I'm going to say the northern one-fourth quarter of the United States if you draw a line from Chicago to Tennessee, Kentucky border and then come east to Washington, even out west they drive more miles per capita than they do in the State of Texas where I'm from. So I have a concern when people start talking about using gasoline tax for a lot of different things because we have to buy more gas in rural America than you do in the big cities because we have more distances to travel. So we pay more tax on an annual basis than you who live here full time and who live north of this boundary line that I have described.

So I want to ask you in your proposal for using gas tax for infrastructure are you saying that you are recommending using the gasoline tax to go into the general treasury or are you talking about some targeting of that tax to the State of North Carolina to use for a rapid transit or mass transit line to help alleviate the road traffic?

Ms. PARCELLS. Well what we were bringing up in the testimony was in fact a reaction that the State of North Carolina and I'm sure other States in the country are looking not only to transit and bicycles, a variety of modes to help alleviate congestion, but they are also looking to their inter-city rail systems as a vital means of traffic alleviation. I guess we would like to see in the case that I brought up here a more liberal interpretation given by DOT to allow States that are trying to make those kinds of decisions to go forward and do so. It will benefit the highway users taking traffic off the roads.

Mr. BRUNKENHOEFER. Nobody is looking at wanting to take any money from Inez or Edna or Sweeney or Praha and taking that money and go spend it up in New York City. What they are looking for is if they have got some money down here in North Carolina, rather than building them another freeway from Charlotte over to Raleigh and they think that putting on two or three trains between Charlotte and Raleigh is a better investment of their gasoline tax and they choose to do that at a State level or a local level to say I want that option, then I think that's all we're talking about here unless I'm wrong is that if the folks down there want to try it then they can use their gas tax to do it with. But it's not looking at going into a rural area and taking their tax dollars and it will be left up, I would guess in our State, it might take some of those freeways out of Round Rock and maybe use it for a train if they wanted to. But it's not a circumstance that I think anybody is saying that you've got to take that money and you've got to take it away from highways and you've got to take it away from rural America and you've got to go put it in some buses in New York City. I don't think that's what they're looking at.

Ms. PARCELLS. In this case this was a case where all levels, local officials, State officials all signed off, they thought that this was a good alternative to widening the costs of widening the highway which perhaps was their other option and so they were looking for that kind of flexibility. I assume that there are other States that would be looking for a similar ability to do that and currently the way the program is interpreted they were not approved for that and they can't do that.

Mr. LAUGHLIN. Well I don't have any problem with your explanation as you have just given it about the flexibility. I had a problem with the gasoline tax because many want to use it for other things and that's unfair to the people who pay it. And the people who pay it are the people that use gasoline for their transportation needs and it puts an unfair burden on those who drive substantially more miles annually than those who drive a lot less or even have other transit options and that's the reason I raised the point. I was pleased that our President understands that the gasoline tax is unfair on a regional basis because of this mileage disparity per capita. So I am pleased that you all also seem to understand that unfairness of using the gasoline tax for anything other than infrastructure and transportation reasons.

Mr. Molofsky and Mr. Brunkenhoefer, I want to direct my next inquiry to both of you. On the aviation subcommittee we have heard testimony from the aviation industry that the cost of drug tests is about what you all have represented, maybe even identical,

I didn't write down the figures, but substantial costs. The point that we have trouble with on the two subcommittees is we're here also to protect the safety and the interest of the traveling public and there as you well know has been a concern over those who drive the airplanes or drive the trains or drive the buses or drive the trucks are out there doing it with booze or drugs in the system. The aviation people tell us that their tests are coming back very satisfactory to them, a very low rate of incidence of drug alcohol usage by their flight crews. I gathered by the way you explained the dollar costs that you are having the same results.

Mr. MOLOFSKY. Yes. Although testing in transit has not yet started, the historical data shows that the problem has never been as severe as some have argued when they were pushing the legislation in the Congress, but we are for safety. We are not for drugs on the job or alcohol or drinking or any substance abuse on the jobs. We are for safety, our union is for it, the UTU is for it, the entire transit labor community is for maximizing safety and the issue that we had raised in prior years in the Congress had not to do with safety as such or substance abuse as such it was what the right response should be in the area of random and that was the focus of our arguments.

As we move forward now though with that legislation in place and with the regulations out there, we see two things. As you move forward to test and to provide the public with the kind of confidence it has and deserves in transportation, it's extremely expensive. Even if the results are minimal as the UTU described in the rail sector, in the airline sector, in fact DOT is reporting that in the surface transportation sector they have the results now of their four state random surface transportation testing involving trucks and inter-city buses and the positive test rates are remarkably low. In alcohol, for example, they are reporting only a .8 percent positive on alcohol out of 25,000 tests. So when Mr. Brunkenhoefer was saying how much it costs to demonstrate a positive, it's extremely expensive. Worthy programs, don't misunderstand. What we're suggesting is in moving forward on these national priorities in the safety, you have to shift some money for it to pay for it, to make it work and that's why we directed our comments in part to reserving increases in operating assistance to help implement the testing and these other programs.

Mr. BRUNKENHOEFER. Congressman, I just reached over and grabbed this little thing out of news here. My union only has 70,000 American members and about 10,000 of those are in bus, so I've got about 60,000 or less in rail, the BLE, local engineers got about another 25. We're talking about 80,000 people. Last year they ran 42,000 tests. In other words your chances of getting a test are 50-50 because between the random testing and the probable cause testing we're just about testing everybody out there. We're testing over half our people and when you are talking about \$150 a test to get down to below 1 percent it seemed like an awful lot of money that somebody spending, rather it be a railroad or rather it be a transit district, one of the things that we have contended on this side is you can get just about the same results with a lot less tests and a lot lost in productivity and a lot less costs.

We're not saying don't test, and we're not saying that testing isn't needed, we've covered all that before you can go back to our old testimony and listen to those songs, but it is where we are right now is we're doing an awful lot of testing out there that we really don't need. Why don't we get down to about that 10 percent test range and I think you are going to get just about the same numbers and the same problem, but when we're, all of us at the table here, we're below about 2 percent and so when you fall below 2 or 3 percent down here why can't we cut down the amount of testing to about 10 percent of the industry rather than what we're hitting at now between probably cause and pre-employment and all the other types of testing you can think of, we're getting where we're actually running much higher than 50 percent because a lot of our people aren't out there working every day that puts them into these numbers.

Mr. LAUGHLIN. Well I'm almost convinced you are right after reading a lot of the material I have and I'm not trying to say you're wrong, I'm just trying to say the data is becoming persuasive in your industry and the air industry. But I think we've got to find a method to have public confidence that your organizations, the aviation industry and the Congress is concerned and monitoring the safe human behavior for the traveling public and I've wondered if in exchange and this may be the wrong way to phrase it but I'm going to phrase it this way for today's hearing, in exchange for relaxing or reducing the incidence of random testing whether you would consider and I'm not trying to get you to agree to this today but whether you would consider it a viable option to consider mandatory testing following a safety incident whether it's an accident or some other incident.

Mr. BRUNKENHOEFER. I've walked down that road and today if you are driving in Sweeney, Texas you run a red light, that's not enough to get you an alcohol test. DPS ain't going to take you in on that, but where we're at right now is they have gone so broad as to what probable cause is that anything, if you run a red light, run a stop sign, fail to make a right hand turn they don't need to look at your eyes, they don't need to look if you stagger, if there is an accident on the property, you are tested automatically. If the wheel falls off the train literally, they test you. I've had people tested, Mr. Laughlin, that were riding in a taxicab because an injury resulted when the taxicab hit a patch of ice in Albany, New York, and the taxicab turned upside down and were hauling a train crew from one location in Albany to another. They were submitted to a probable cause drug test because an injury was involved. I have had them have a broken back at the scene, laying on the right of way, be transported by EMS, be given morphine at the scene, go to a hospital at El Paso, Texas, and have to be catheterized to provide a urine sample for a drug test. I have had a situation where a supervisor reached over and lined a switch and when he lined it he threw it on top of a foreman's foot and broke the foreman's foot and they required the worker to submit to a drug test because an injury took place but not the foreman who threw the switch over and broke his foot. I mean, the rules out there for when an accident takes place are pretty broad. I mean that's a great deal of our problem.

Mr. MOLOFSKY. Let me add to that by saying that on December 15 of 1992 the Department of Transportation released a series of regulations covering all the transit modes, rail, truck, bus and air as mandated by the Congress last year. And there were several questions and proposals that in those regulations that I think are related to your question. One of the questions that was asked to the public and everyone affected was whether the random testing range should be at 50 percent as initially proposed or reduced to as low as possible but yet have something in there because the law mandates it and transit labor and a whole range of groups and industry and rail and air and transit have argued that the rate should be reduced to 10 percent, that the data warranted and if you do that, if you drop from 50 to 10, the deterrent effect of testing will be unaffected, you'll still have it. The numbers are low now and if you keep random out there, you'll still have some testing that's unknown to the workers and so you'll have the deterrent effect.

On the issue of accidents, as you heard, there is need for refinement in the proposed regulations as to what kind of accidents require workers to be tested. Each of the industries—rail, truck, transit and air—have different triggers proposed accident testing. All require post-accident testing in fatalities for example. Some in the transit industry set dollar limits. If the bus is hit and it causes under this proposal a \$1,000 damage, everybody gets tested. We think it should be 5,000. That's what most properties have, we don't know why they dropped it from the original proposal of 5,000 to 1,000 and we have made these points in the response to our regulation to these proposed regulations and we'd like to share those with the committee because it's a cost item that we're all struggling with, how to maximize safety but do it in a cost-effective way. That's the issue in the regulations and that's part of the issue confronting this committee, because if you fully fund ISTEA and you devote your resources in ways that aren't effective and necessary, certainly in the limited operating assistance area you are wasting money and we don't want that to happen.

So we're suggesting that you need to increase operating assistance, target where it goes and hopefully as you target it, DOT when it finalizes the regulations will put a balance out there, will reduce the random rate and have some fair and equitable and reasonable testing triggers for accidents, post accident testing and the whole other proposals that they have suggested in the regulations. So it's a good area for a discussion and work.

Mr. LAUGHLIN. Sure, and that's the reason I raised those points.

Mr. MOLOFSKY. Thank you.

Mr. LAUGHLIN. I can tell you from listening to a lot of people in my area where the public safety concern gets inflated and inflated. Just to use one example, and there could be others, you have the air crash incident in I believe it was La Guardia but the union representing the pilot that was involved, and it was not a fatality on the part of the pilot but there were fatalities I think in the crash, but whether there were or not it was a significant event, I believe it was Airlines Pilot Association that took their member pilot off their plane off for some hours. That really hurts the image of unions, work organizations, companies, employers or anybody

else who are out there publicly proclaiming they are for safety and transporting the public whether it's on airplanes or busses or trucks. And Jim, I understand what you are saying about me running the red light in Sweeney but the difference is I'm in the car either me or two or three people and I'm not hiring out and those kinds of lines need to be better defined with cost effectiveness in mind and with safety of the traveling public in mind. I have no doubt you feel the same way.

Mr. BRUNKENHOEFER. Amen, Congressman. If we could have gotten more bad publicity in the drug testing end of it, we would have had to hire public relations people to get us that much bad publicity, if we could get any more. Because we did a pretty good job all by ourselves getting about as much negative publicity you can get. But at some point our side has some merit to it.

Mr. LAUGHLIN. Sure. I agree. Thank you very much Mr. Chairman, and thank the panel for being here.

Mr. RAHALL. I thank the panel as well.

That concludes today's oversight hearings. The subcommittee will resume its sitting same time, same place tomorrow, 10 a.m., room 2167. Thank you. The subcommittee stands in recess.

[Whereupon, at 3:02 p.m., the subcommittee recessed, to reconvene at 10:00 a.m., Wednesday, April 28, 1993.]

PREPARED STATEMENTS OF
WITNESSES

STATEMENT OF
JAMES M. BRUNKENHOEFER
NATIONAL LEGISLATIVE DIRECTOR
UNITED TRANSPORTATION UNION
BEFORE THE
SURFACE TRANSPORTATION SUBCOMMITTEE OF THE
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

APRIL 27, 1993

(611)

My name is James M. Brunkenhoefer. I am the National Legislative Director of the United Transportation Union -- UTU. It is a pleasure to have the opportunity to appear before the Subcommittee today to discuss an issue that is critical to our nation's economic well being and to stimulating jobs in what has largely been a "jobless recovery."

The UTU is the largest labor organization representing railroad workers in the U.S. and Canada and is one of the largest unions representing employees in the U.S. bus and transit industry. Since the UTU represents workers employed on public rail and bus systems, we are extremely interested in the implementation of the landmark Intermodal Surface Transportation Efficiency Act of 1991 -- ISTEA.

ISTEA marked a new approach to transportation policy and recognized the multi-modal nature of our freight and passenger transportation system. We believe this legislation holds the promise for real change in transportation infrastructure investment policy.

Greater investment in our transportation infrastructure will bring many great and necessary benefits to the men and women represented by UTU and to virtually every industry sector in America. Investment in no other industry can produce the long- and short-term economic stimulus so badly needed in this anemic economy.

During the Reagan and Bush Administrations public investment in transportation took a significant beating. But thanks to the leadership of this Subcommittee and the full Committee on Public Works and Transportation, efforts to gut public investment were defeated in favor of a policy to ensure continued Federal funding of many vital surface transportation programs including mass transit and Amtrak.

During the recent debate over a jobs bill, which as you know stalled in the clamps of a filibuster in the Senate, the Clinton Administration took a strong position against a *business as usual* policy and attempted to bolster spending for mass transit, Amtrak and other programs just as important.

While that package failed to advance in the Senate, it is clear that the new Department of Transportation -- led by Secretary Federico Peña -- is sending a strong message that it wants to rebuild and expand our eroding transportation infrastructure. This is a powerful message ... one the UTU wholeheartedly endorses.

In the mass transit industry insufficient funding has resulted in cut backs at a time when most cities need service enhancements and expansion. Some people, such as the elderly and

handicapped, the poor, students and those who are unable to afford an automobile or unable to drive, have no other means of travel other than public transportation.

Insufficient funding of public transportation has resulted in an aging bus fleet. Today about 22 percent of the 55,000 buses now in use should not be in service and should be replaced. 40 percent of the small buses and vans now in service are also too old and unreliable, and should be replaced.

The full implementation of ISTEA will generate thousands of much needed jobs in the construction and repair of public transportation systems and will create many thousands of new jobs in the operation and maintenance of new and existing systems.

ISTEA will help to create needed alternative fuels such as methanol ... It will help get Americans out of their cars and onto public transportation systems like their counterparts in Europe and Japan ... Indirectly, this will reduce our trade deficit, much of which is caused by our enormous reliance on foreign oil to fuel our orientation to the automobile ... And finally, the full implementation of a truly multi-modal transportation policy, such as that envisioned by the authors of ISTEA, will enhance our national effort to promote cleaner air standards.

The UTU is prepared to support a fuel or energy tax to help generate the revenues needed to fully fund ISTEA in all areas.

Now is the time to fully implement ISTEA. President Clinton is on record supporting a new transportation investment policy. A majority of the House and Senate have also spoken loudly in support of a new transportation investment policy.

Mr. Chairman, members of the Subcommittee, the UTU believes this is the most opportune time to advance a new transportation investment policy. ISTEA provided the blueprint. But until we eliminate the obstacles to fully realizing ISTEA's potential, we are putting our economy, our multi-modal transportation system, and hundreds of thousands of working men and women on hold.

Let me thank you again for the opportunity to express the views of the United Transportation Union.

G. THOMAS DuBOSE
International President

LLOYD W. SWERT
Assistant President

CHARLES L. LITTLE
General Secretary and Treasurer

J. M. BRUNKENHOEFER
National Legislative Director

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NATIONAL LEGISLATIVE DEPARTMENT



400 NORTH CAPITOL ST. N.W.
SUITE 856
WASHINGTON D.C. 20001
(202) 347-0900
FAX (202) 347-0958

April 29, 1993

Honorable Nick Joe Rahall, II
Chairman, House Public Works and Transportation
Subcommittee on Surface Transportation
Washington, DC 20515

Dear Mr. Chairman:

In my testimony in front of the Public Works Surface Transportation Subcommittee, I may have included in my testimony an inaccurate statement concerning Burlington Northern's role in bidding on a commuter operation in Florida.

Please disregard any reference to the Burlington Northern. Our Union position remains that all such commuter and other rail operations should come under the provisions of current railroad law and regulation.

Sincerely,


J. M. BRUNKENHOEFER

National Legislative Director

cc: Cathy Batky, BN
O. B. O'Bannon, AAR

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TESTIMONY OF JAMES W. CLARKE

the Sierra Club
on behalf of
America's Coalition for Transit NOW

BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

Tuesday, April 27, 1993

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*
National Headquarters: 730 Polk Street, San Francisco, California 94109 (415) 776-2211

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Mr. Chairman, good morning and thank you for this opportunity to testify as part of this panel. My name is Jim Clarke and I am a Sierra Club volunteer currently serving as Conservation Chair of the Montgomery County Group of the Sierra Club in Maryland. Today, I speak with the backing of more than half a million Sierra Club members nationwide. We are one of 179 firms and organizations that are members of America's Coalition for TRANSIT NOW.

The Sierra Club is pleased to be an active partner in the TRANSIT NOW Coalition which includes business and environmental interests, health care and disability groups, financial institutions and a broad range of other interests. What brings us together in this Coalition is a belief that public transit offers opportunities for improving the economy, increasing the mobility and productivity of this nation's workforce, and has a positive impact on the environment and health care costs. We believe there are critical transportation alternatives to the automobile. TRANSIT NOW has been active in reaching out to those not ordinarily associated with mass transit to energize support for the passage and effective implementation of the Intermodal Surface Transportation Efficiency Act (ISTEA), as well as the transit provisions that were contained in last year's Comprehensive Energy Policy Act. A complete listing of TRANSIT NOW members is being provided for the record along with my written statement.

Statement of James W. Clarke, Page 2

I want to begin by clearly stating why the Sierra Club recognizes the importance of mass transit and supports ISTEA implementation. We view this legislation as one of the most critical pieces of environmental legislation passed by the Congress in the past decade, and certainly the most important piece of transportation legislation since the Urban Mass Transit Act was signed into law more than 25 years ago. The ISTEA also fulfills a major role in implementing the transportation requirements of the Clean Air Act. The emphasis which ISTEA places on flexibility, allowing performance and need to determine transportation funding decisions, is a vital concept contained within the legislation. Additionally, increasing the involvement of state and local decision makers in the transportation funding process is a very positive change.

The Sierra Club's statewide Chapters and regional Groups are constantly faced with highway projects which do nothing to improve air quality and cause massive displacement of people, businesses and natural resources. The wetland losses alone are staggering and other adverse impacts result as well, such as the degradation of critical habitats and vistas, reduced open space, water quality impacts of run-off from the pavement and so on. ISTEA and its flexible funding provisions for all transportation projects, including mass transit, has given us an opportunity to positively

Statement of James W. Clarke, Page 3

impact projects which move people and goods but which can help improve environmental conditions.

ISTEA allows metropolitan planning organizations (MPO's) to achieve environmental and energy goals. Every dollar that is spent improving the performance and utilization of mass transit is a dollar less that the government will have to spend to clean our air or repair a damaged watershed due to highway construction.

As you know, transportation consumes approximately 63 percent of all oil used in the United States. The trend in transportation energy consumption shows a continuing increase, a situation that cannot be sustained over the long term. The amount of energy used in transportation dominates our consumption pattern. This is because of our reliance on private, single occupant vehicles for commuting and other needs.

ISTEA is the first significant legislation which pursues intermodal surface transportation and encourages a broader view of regional transportation systems. Intermodal transportation, which is predicated on a strong transit component, allows us to achieve important national goals for improved air quality, energy conservation, international competitiveness, and mobility for the elderly, persons with disabilities, and the economically disadvantaged. The transit operators testifying with me today have had various experiences with ISTEA. My message is that flexibility will be the agent of change that will lead to a successful national transportation system for the next century.

Statement of James W. Clarke, Page 4

As this Committee reviews the progress of ISTEA and considers possible refinements to the original legislation, I urge you to consider ways in which FTA can improve its outreach and communications with local governments, MPOs and transit operators. Flexibility will work most effectively when it is fully understood.

The legislation also holds out the possibility of significant funding increases for mass transit. It blunts the harsh rhetoric and devastating budget proposals of the past 12 years and looks ahead to steadily increasing transit investment.

TRANSIT NOW respectfully requests that the Committee increase the amount of funds available through the Mass Transit Account of the Highway Trust Fund. There are significant resources currently available to be utilized that would not need to come through appropriated general funds. Advocates of mass transit, including TRANSIT NOW, have recently held discussions with the Department of Transportation and high ranking officials at the White House to protect the transit portion of the 2.5 cent gas tax which became law in 1990. As you are aware, public policy changes were discussed within the Administration which would have had a potentially devastating effect on Trust Fund revenues. Now that this crisis is apparently over, we look to you to assist us in utilizing the Trust Fund to the fullest extent possible.

Mr. Chairman, transit is an investment. It is an investment that has been whittled down in the past but, with adequate resources, people can be put to work, infrastructure can be

Statement of James W. Clarke, Page 5

repaired and improved, air can become cleaner, and congestion can be reduced. This Committee drafted landmark legislation just two years ago. TRANSIT NOW and its 179 members are committed to working with you to support transit and the implementation of ISTEA. Thank you for this opportunity to testify before you.

#

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STATEMENT OF MARLENE CONNOR, ADMINISTRATOR,
PIONEER VALLEY TRANSIT AUTHORITY,
SPEINGFIELD, MA.

Thank you for the opportunity to address this committee. My name is Marlene Connor and I am the Administrator of the Pioneer Valley Transit Authority in Springfield, Massachusetts. The PVTA is the second largest transit authority in Massachusetts, serving 23 communities with a fleet of 260 vehicles. We provide service to over 12 million passengers annually. PVTA had a negative experience in FY 93 on ISTEA implementation. That is why we support additional oversight on ISTEA.

Let me first explain how the MPO process works in Massachusetts. The commonwealth is divided into 13 separate Metropolitan Planning Organizations (MPO) districts. Each of the MPO's outside of Boston has 4 members. The members include the Secretary of Transportation, Mass Highway Commissioner, the Regional Transit Authority and the Regional Planning Commissions. No MPO has formally met in Massachusetts since 1979, with exception for the Boston MPO which meets regularly and has two additional members. The 1979 meeting was in Springfield.

A local advisory entity to each of the Commonwealth's MPO's, called the Joint Transportation Committee which has one representative from each community, puts together each region's Transportation Improvement Program (TIP). The document is then endorsed by the 4 signatures of the MPO and becomes the official tool of the government by which projects are identified for funding. ISTEA called for each state to develop one TIP, with each region's priorities considered and projects prioritized at

the local area, based on locally assessed needs. In fact, in FY 93, the Statewide TIP was put together by the Boston MPO, with no direct input from the other MPO's. We worked hard at the local level, both highway and transit interests, to evaluate objectively our needs and together prioritized the needs we saw. Only to have this effort be ignored at the state level. All the control was asserted from the Executive Office of Transportation and the Mass Highway Commissioner. All funding which could have flexibly funded transit particularly, CMAQ, was given to Boston-based (MBTA) transit projects. The Secretary of Transportation is also chairman of the MBTA board.

Because of this arbitrary determination of projects selected for the limited funding which is available, a coalition has formed to try to make ISTEA work in the spirit in which it was intended and to prevent the same action from occurring in FY 94. The Mass Association of Regional Transit Authorities and the Mass Association of Regional Planning Commissions have joined forces to try to bring statewide equity to and fulfill the spirit of ISTEA. We have been going from district to district educating all local elected officials and statewide legislators about ISTEA and about each individual region's public transit needs including transit. In order to correct the process we see the Massachusetts state legislators as a body which can bring local pressure to bear on a state entities. We feel it is important for people to understand the broad impacts of ISTEA. How it can help communities view transportation as one unit, not separate

functions. Education has been our first tool. However while, education is a reasonable means by which we can focus attention, it is not the only solution.

As the ISTEA law recognizes, we must work to change the way state transportation officials have operated for many years. The archaic Massachusetts MPO process as it is currently structured is subject to arbitrary decisions which the local areas have little control over. ISTEA should be amended to require that the federal government review each state's MPO structure to ensure that equity exists. MPO's should be structured within states so that local members have a controlling interest in their own areas, there should be no conflicts of interests between MPO's in a state. In addition, an appeal process should be created so that if problems do occur there is recourse at the federal level to assist MPO districts.

It is also equally important to fund the ISTEA program at its fully authorized level. By reducing what funds are available, it reduces local areas to fighting amongst themselves. Larger cities which have the ability to wield power at the state level over smaller communities will do so. An improved intermodal transportation network which includes all forms of transportation, from highways to trains to buses, is the best way to improve economic strength and viability of all of our transportation districts.

Testimony Before
 Surface Transportation Subcommittee of the
 House Public Works and Transportation Committee
 on
 The Intermodal Surface Transportation
 Efficiency Act of 1991
 by
 Lawrence D. Dahms
 Executive Director
 Metropolitan Transportation Commission
 April 27, 1993

The landmark Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) changes the entire who, what, why and how of surface transportation thinking, decisions and execution. So far, we are experiencing the teething pains of this entirely new challenge just as we also enjoy some of the first fruits of ISTEA. We welcome the opportunity to share some of our early experiences with your Surface Transportation Sub-Committee as you make a public assessment of the ISTEA processes and products.

In this testimony we propose to:

1. Offer some examples of the positive impact of ISTEA in California and the San Francisco Bay Area.
2. Observe some of the transition difficulties associated with moving from the Interstate to the ISTEA-era.
3. Comment briefly on salient features of US DOT proposed rulemaking concerning ISTEA's management systems and planning processes and EPA proposed rulemaking on air quality conformity.
4. Reflect on the growing body of professional activity that reinforces the conclusion that ISTEA provides the foundation and framework needed to effectively advance transportation improvements in today's competitive environment.

PARTNERS

With 100 cities, nine counties, several ports, over 20 transit operators and a number of regional, state and federal agencies all having some responsibility for the workings of the metropolitan transportation system (MTS) of the San Francisco Bay Area, there is one word to explain how well or poorly we will serve our customers -- Partnership. ISTEA provided the impetus to establish and reinvigorate effective partnerships that already are producing on-the-street tangible results in the form of freeway call boxes and service patrols to assist stranded motorists, a new intercounty bus connection across the Richmond-San Rafael Bridge, an integrated five-city synchronized signal upgrade on State Route 82 in San Mateo County, a package of transit ticket and public information improvements, and an IVHS field operation test known as TravInfo. These are some of the 20 Joint Urban Mobility Program (JUMP Start) projects endorsed by the Bay Area's 36-agency partnership when it formed in January, 1992, just one month after the President signed ISTEA.

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PLAYERS

A Blue Ribbon Advisory Council organized to support the Partnership brings together a broad array of interests not previously assembled. It includes academic and research professionals, environmentalists, business leaders and community activists. A Freight Advisory Council provides the forum for a focused response to intermodal provisions of ISTEA. By these and related activities, we hope to bridge the trust gap that festers because so many interests affected by transportation decisions have been on the outside looking in. Now they bring new demands to the process -- not easy to fill -- but with inclusion comes insight as we address the planning factors defined by ISTEA and hopefully the opportunity to build a broader base of support for needed transportation programs and funding.

SYSTEMS

The National Highway System (NHS) designed to serve rural America and connect metropolitan centers is on the front burner now as states prepare to meet the system definition deadlines. We are encouraged by the fact that the congestion and intermodal management systems requirements of ISTEA encourages the same systems discipline associated with building the Interstate be extended to the Metropolitan Transportation System. To that end, MTC, Caltrans and the Partnership Operations and Management Committee have just launched a new JUMP Start project to develop a management plan for the Metropolitan Transportation System.

DELEGATION

ISTEA formula allocation and common matching requirements smoothed the way for locally elected officials to have a voice at least equal to state engineers in assessing how best to make transportation improvements in urban areas. The first test of this delegation came last summer when the ISTEA Surface Transportation Program and Congestion Management and Air Quality funds were allocated to finance over 200 new projects in the Bay Area. This action demonstrated the promise of ISTEA to bring an array of relatively small, but cost-effective projects on-line. The program is seen by most of our partners as being more responsive to public need than if the \$214 million in question had been spent instead on a single interchange.

The California State Legislature is to be thanked for its role in advancing the ISTEA delegation by amending state law to be reconciled with ISTEA allocation factors and to provide state matching funds for projects on or off the state system. The State has been responsive to the mandates of ISTEA and to the needs of our urban areas.

This testimony only skims the surface in identifying progress made possible so far by the passage of ISTEA. We will be happy to provide any detailed back-up the committee may desire.

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TRANSITION

I am sure you hear reports of difficulties in delivering ISTEA programs as well. Some growing pains are inevitable any time the rules of the game are changed.

In the absence of EPA and US DOT regulations to define air quality conformity, planning processes and management system requirements -- there is a sea of confusion. As the government moves to complete the current rulemaking phase this problem should be mitigated.

A few players have been disappointed that the first round of ISTEA allocations produced less -- not more -- federal funds. Several opportunities are present to remedy this situation. First, the ISTEA authorization gradually increases some programs. Second, the new administration proposes to close the gap between appropriations and authorization. And finally, as the revised allocation processes mature and a clearer picture of who is doing what emerges, many of the first-year losers probably will become second phase and continuing winners.

Some are now observing that funds for new programs such as Enhancements, the Surface Transportation Program and Congestion Management and Air Quality are not yet being spent. This should not be a surprise to anyone. The Transportation Improvement Program (TIP) is the project pipeline. There is an inherent lead time associated with project delivery which is accommodated by the TIP. But, like the movement of a battleship, TIP direction cannot be changed suddenly. In the case of MTC, the first ISTEA allocation decisions were made in July, 1992, the air quality conformity analysis was concluded in September; however, the federal approval of the TIP did not occur until February, 1993. Only now are the projects eligible to move ahead.

Even the question of who decides and who is to be consulted in making allocation decisions is still being worked out. Fortunately, in California, the groundwork for answering these questions was clarified in the legislation passed to reconcile state law with the provisions of ISTEA. Even in our case, however, there remain important process details to be worked out between local governments, the metropolitan planning organization (MPO) and the state. As we move ahead, our success will depend largely on how we define and commit to these partnership roles and responsibilities.

US RULEMAKING

At this stage, a great deal rests on the outcome of federal regulation writing. MTC appeared when US DOT representatives heard public testimony in Burlingame, California on April 1, 1993. We have also testified and commented extensively on US EPA's air quality conformity rule making. Our testimonies concerning these proposed rules are attached.

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We believe the proposed metropolitan planning rules are reasonable and adhere to the spirit of the ISTEA legislation. There are three notable deficiencies, however, which need to be remedied. First, it is difficult to understand how metropolitan planning can be relevant without a focus. A Metropolitan Transportation System (MTS) must be defined to provide a framework for organizing decisions about how to improve urban travel. The Metropolitan Transportation System (MTS) is noted in the ISTEA planning provisions, but largely ignored by the proposed rules. Similarly, we find the National Highway System (NHS) is ignored in the state planning regulations proposed. We do not believe state plans can be relevant outside of the National Highway System (NHS) context.

Second, while we applaud the concept of corridor and sub-area studies call for in the proposed regulations, the responsibility must be clearly established for determining the scope and conducting these studies. The metropolitan planning organization (MPO) should bear this responsibility. As written, the rules are vague -- calling for input from several sources which is likely to invite more extensive analysis than planning budgets can sustain. The result could be analytical gridlock.

Finally, we believe the sequential process of consideration and elimination of all possible transportation management strategies before considering additional highway lanes as proposed in the proposed rules will foster a sham analysis and invite litigation. Strategies to build and strategies to manage must be considered together if either is to be effective. Again the responsibility for determining the appropriate analysis should be delegated to the MPO.

Our management system testimony focused on the congestion management and intermodal systems. Here again the proposed rules fail to connect directly to the major systems -- the National Highway System (NHS) and the metropolitan transportation system (MTS). Further, the rule fails to reflect the ISTEA designation of metropolitan planning organizations (MPOs) as the bodies responsible for the congestion management system (CMS) in the largest metropolitan areas thereby missing the connection of using the congestion management system (CMS) as the vehicle to improve decisions made in the metropolitan long-range plan and the Transportation Improvement Program (TIP). Finally, the management system rules crave hordes of data without having defined how the data is to be used. Here the horse must be put in front of the cart.

Additionally, air quality conformity rules will be important. We believe the draft rules proposed by EPA are generally in the right direction. There is, however, considerable pressure to amend these rules by the air quality community which we believe could stymie progress in both transportation and air quality. These brief comments regarding the proposed rules are outlined in some more detail in the attached testimonies.

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ISTEA MOMENTUM

The thrust of ISTEA's new thinking has been the subject of dozens of conferences hosted by the Transportation Research Board, IVHS America, US DOT, every unimodal and multimodal association based in Washington, D.C., and by their peer organizations in the 50 states.

Perhaps ISTEA's resurrection of R&D as a legitimate transportation endeavor best epitomizes the spirit of adventure that has been turned loose. We have moved from a sense of despair where congestion has been mounting, bridges have been falling and mobility seemed in the decline as a national interest to a new mood of hope, optimism and even confidence. Programs like IVHS excite the public because of the American infatuation with new technology. ISTEA excites the transportation profession because it puts in bold relief the concept that a transport system must be seen as such -- an integrated system. To work well it must be planned, financed, built, operated and managed as a system. At IVHS America this is being recognized -- there must be a client with a system if there is to be productive application of new technology. ISTEA is the catalyst for the systematic approach and for the partnership commitment that are both essential ingredients of success.

We applaud your committee for this far-sighted legislation and thank you for this early review of its development.

TESTIMONY

Notice of Proposed Rulemaking: Management Systems
Burlingame, CA
April 1, 1993

William F. Hein, Deputy Executive Director
Metropolitan Transportation Commission

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) for the Management System requirements. Our comments are preliminary as we are still reviewing the proposed regulations. We will be submitting detailed written comments to the docket.

These rules are critical because they are at the heart of ISTEA; they can make or break the transportation revolution initiated by ISTEA. I will first make comments on the NPRM's general provisions and then I will discuss our concerns regarding the Congestion, Intermodal, and Public Transportation Management Systems.

General Provisions

- 1) The regulations should state that the MSs should add value to the planning and programming process by providing information for making decisions in these processes. The regulations should establish an explicit link between the needs identified in the management systems and the finances available over the planning and programming period (via the RTP/TIP) to aid in prioritizing limited resources. This information is critical to the planning and programming process if the states and metropolitan planning organizations (MPO) are to prepare financially constrained TIPs.
- 2) It appears as though the NPRM puts forth management systems that collect a substantial amount of data without any clear intention of the use of these data.
- 3) The NPRM puts forth a procedure for a State to request federal acceptance of existing management systems to be used to fulfill federal management systems requirements. The NPRM should require the State make such a request in cooperation with affected MPOs.
- 4) On a positive note, the NPRM puts forth: a) existing data sources should be used to the fullest extent possible, and b) the management systems should be coordinated among themselves.

Congestion Management System

1) The regulations should explicitly state that the CMS/IMS and Traffic Monitoring System cover the integrated multimodal Metropolitan Transportation System (MTS) and reference the metropolitan planning process described in 23 CFR Part 450. ISTEA's landmark establishment of the MTS should be significantly represented in the regulations.

2) The regulations should outline the TMA CMS, as follows:

a) The CMS is based on the integrated multimodal Metropolitan Transportation System. The CMS comprehensively looks at the performance of MTS from a user perspective, both across the system and within segments of the system.

b) To improve the performance of the MTS, the CMS will recommend a full array of strategies, ranging from demand reduction to operations and capacity expansion. These strategies will be recommended for implementation on an area, subarea, corridor or project level.

c) These strategies shall contribute to investment decisions that are made in long range plans and transportation improvement programs to relieve congestion and prevent the occurrence of congestion. In other words, the RTP and the TIP will be the planning and programming decision making arena to implement the CMS strategies.

3) The regulations should put forth that the CMS's performance measures must consider the full multimodal transportation spectrum.

4) The NPRM states that the State must cooperate with the MPO in the development, implementation and establishment of the CMS and may enter into agreements with regional and local agencies as well. It further states that the CMS shall be part of the metropolitan planning process in TMAs. However, it fails to explicitly acknowledge that for MPOs designated as TMAs, the MPO, not the State, is responsible for preparing a CMS as part of the metropolitan transportation planning process. It is imperative that the CMS be an integral tool of the metropolitan planning process and the NPRM should clearly designate the MPO as the lead agency of the CMS in the TMAs, and that the MPO should develop it in cooperation with all the partners.

5) The appropriate data collection arm for the CMS is the Traffic Monitoring System (TMS), as the NPRM appears to suggest; however, the relationship should be more clearly drawn in the regulations for both systems, especially with regard to the inclusion of transit passenger information in the TMS.

Intermodal Facilities and Systems Management System (IMS)

1) To clearly distinguish between the IMS and the CMS, the IMS should cover the performance, from a user's perspective, of the state's intrastate (i.e., intercity), interstate, and international travel. Using this scale, the IMS should focus on the major movements and connections between the various modes, which include rail, bus, and vehicle trips. [The metropolitan CMS would focus on the performance of the integrated Metropolitan Transportation System (MTS), on an area, subarea, corridor, or project level.]

We continue to believe that the primary focus of the IMS should be freight. Passenger interconnections should be limited to the major intermodal connections such as at airports. All other passenger connections can be addressed as part of the CMS.

Because many of the connections between these modes occur in metropolitan areas, the IMS would manage the performance of intermodal transfer facilities within metropolitan areas and provide the performance outputs to the CMS. Then, the IMS and the CMS would be directly linked; as the CMS develops strategies to optimize the performance of the MTS, a key consideration for some corridors would be the intrastate, interstate, or international movements that would be managed in the IMS.

In other words, the IMS focuses on the "door to door" connections or major movements and blockages between major areas, whereas the CMS focuses on the performance throughput of the MTS on an area, subarea, corridor, or project level.

2) The IMS should be incrementally developed so as to properly develop the system, especially with respect to attaining useful data. With a focus on freight, the IMS will require MPOs and states to carefully develop the IMS and the data needs to support the system.

Public Transportation Facilities and Equipment MS (PTMS)

We strongly support the NPRM's definition of the Public Transit Facilities and Equipment MS as an asset management system. However, a PTMS should only be required for urbanized areas. Rural operators do not receive Section 9 funds and thus are not required to submit Section 15 reports. As a result, they do not have the asset reporting and efficiency requirements to which operators in the urban areas are subject.

We urge your support of our testimony and forthcoming written comments on the proposed regulations. Thank you for the opportunity to comment.

TESTIMONY

Notice of Proposed Rulemaking: Metropolitan Planning
Burlingame, CA
April 1, 1993

William F. Hein, Deputy Executive Director
Metropolitan Transportation Commission

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) on the Metropolitan Planning Requirements. We appreciate FHWA and FTA staffs' efforts in proposing cohesive and workable metropolitan planning regulations. However, we would like to briefly comment on four areas of concern in the proposed regulations. Please note that our comments are preliminary and that we will be submitting detailed written comments to the docket.

1) Substantial inclusion and focus on the Metropolitan Transportation System (MTS) and National Highway System (NHS) is needed in the regulations. ISTEA broke new ground in establishing these systems. The Moving Urban America TRB/FHWA/FTA conference proceedings highlight the NHS and MTS as critical elements of the metropolitan and statewide long range planning process. However, these systems are infrequently mentioned in the NPRM and definitions are not provided. We suggest the following definition of the MTS and its relationship to the NHS which needs to be explicitly included in the regulation (section 405.104):

"Metropolitan Transportation System means a network of integrated multimodal/intermodal transportation facilities that will be the focus of the metropolitan long range plan's planning and investment requirements. The MTS will include regionally significant highways, arterials, transit systems, seaports, airports, and appropriate non-motorized facilities within the MPO area. The National Highway System, as it is defined within the boundaries of the MPO, will be an explicit subset of the greater MTS."

2) Responsibility should be assigned to the MPO to determine the need and scope of "corridor or subarea studies" for major transportation investments. We support the direction in the proposed regulations to make corridor/subarea analysis a multimodal analysis for major transportation investments; however, not every major investment would need such an analysis. The need for corridor and subarea studies should be determined by the MPO on a corridor by corridor basis depending on the scale of investment and modal options which need to be analyzed. The extent of the analysis should be ultimately determined by the MPO after appropriate consultation with federal and local agencies. The current FTA Alternatives Analysis process is too resource intensive and lengthy to serve as a good model for corridor/subarea studies. More latitude is required in order to make timely investment decisions and avoid unnecessary project cost escalations.

3) We have two concerns with respect to the Congestion Management System (CMS), as described in the NPRM for the metropolitan planning regulations. First, the CMS requirement, as depicted here (section 450.136) and in the proposed regulations for the management systems, erroneously relies upon a sequential rather than a comprehensive process, particularly with regard to single occupancy vehicle (SOV) capacity increasing strategies (section 450.136). By a "sequential" process, we interpret the proposed regulations to require an analysis to evaluate if travel demand reduction and operational management strategies (essentially in isolation) can be used to eliminate the need for an SOV project. Then, only after this analysis demonstrates that travel demand reduction and/or operational strategies are insufficient to meet project demand, would an SOV project be considered. Rather, we believe that new SOV capacity should be considered in the CMS as part of a comprehensive multimodal planning and programming process that would include a logical packaging of appropriate operating, travel demand reduction and capacity enhancing strategies. Thus, the CMS should include the concurrent examination of an array of operation and demand management strategies (including appropriate SOV strategies) as part of a comprehensive analysis of alternatives for improving the performance of an integrated, intermodal MTS. These strategies would feed into planning and investment decisions that are made in the metropolitan long range plan and transportation improvement program.

Secondly, because it is imperative that the CMS be an integral tool of the metropolitan planning process, the MPO lead agency role of developing the CMS in Transportation Management Areas (TMA) [section 450.112 (g)] should be consistently recognized in section 450.120 and in the Management Systems regulations [sections 500.107 (e) and 500.505].

4) The description of the financial plan allows for a strong financially constrained long range plan [section 450.122 (b)(11)]. However, further clarification is needed as to the definition of "reasonably available funding sources", as requested in the Federal Register (March 24, 1993). We feel that reasonably available funding sources should include only those fund sources for which we expect federal or state authorization or reauthorization. Fund sources which would require voter approval (such as sales tax measures) and/or future legislative action for new fund sources should not be included in the revenue analysis which forms the basis for long range investment decisions in the plan.

In addition, the state should be required to provide financial projections for fund sources under its control. These projections would facilitate the adherence of the financial plan requirement by the MPO.

We urge your support of our testimony and forthcoming written comments on the proposed regulations. Thank you for the opportunity to comment.

Public Hearing on EPA's Notice of Proposed Rulemaking on Transportation/ Air
Quality Conformity Process
Los Angeles, California
February 5, 1993

Testimony of William F. Hein, Deputy Executive Director
Metropolitan Transportation Commission

Overview

I would like to start by complementing EPA, FHWA, and FTA on what we believe to be a generally reasonable approach to the conformity process. You have done an admiral job of sorting out the difficult issues inherent in this process.

Today, I am here as much to learn as to give testimony; we will be formally responding at a later date. At MTC, we have conformed three TIPs under our court-approved conformity procedures and interim conformity guidelines. These analyses demonstrate that an \$11 billion investment in transportation infrastructure will reduce auto emissions by 1% or less. Tests of varying the investments between transit and highways show similar results. Given the marginal air quality effect of new facilities, I would caution against making the conformity process overly burdensome. However, we recognize the importance of conformity in assuring attainment of annual transportation emission budgets for the control strategy period.

Consultation Process

We believe that consultation is an important issue. The opportunity to consult should be provided and should occur in a timely fashion. However, it ought not be turned into another review and approval process, and we should not expect that agreement or consensus will result. If the consultation process does not take place as decided upon, a delay in the conformity determination until the consultation process takes place would be acceptable, assuming the following: 1) the consultation process is clearly spelled out in advance; 2) the parties are given the opportunity to consult but if they do not respond in a timely fashion, it would not delay the process; 3) consultation does not necessarily equate with agreement among all parties.

Models and Associated Analysis Methodologies

EPA concurrence on the choice of models and associated methodologies to be used in hot-spot analyses and regional air quality modeling should not be required and any

recommendations for improving travel demand models should be uniform throughout the country and consistent with modeling "best practices." We have one of the best models in the country. Through our experience, we understand the difficulty in developing and maintaining a modeling system. EPA should be helpful and not prescriptive. Regional EPAs should not be permitted to demand more than that which is required nationally to do the job. We advocate a continuing dialogue for improving models.

Conformity of the TIP

We favor the idea of conforming the TIP based on the RTP conformity if projects from both are consistent. However, a new conformity determination of the TIP should not be required for funding changes which don't alter the design concept or scope of a project. Also, new conformity determinations should not be required for non-regionally significant projects that would not affect the regional emissions inventory. These types of revisions should be considered exempt in the discussion about the frequency of conformity determinations.

TCM Implementation

We agree that areas should not have to demonstrate that predicted emissions reductions expected in the SIP for each TCM have been achieved. Rather, regions should show that each TCM is being carried out as described in the SIP. The determination of timely implementation of TCMs should be based on all reasonable actions to remove obstacles to approval or funding, not all possible actions. Also, conformity determinations need to be sensitive to the particular TCM and the severity of slippage. Minor TCMs will not be of the same importance as those which achieve significant emissions reductions. A SIP revision should not be required every year to reflect the status of TCMs. If a TCM has slipped severely behind schedule (2-3 years), the SIP should be revised to delete the TCM and substitute a new one if necessary.

Transit Projects

You've asked many questions in the NPRM, and we plan to address several of them in writing. One specific question deals with whether or not conformity should be applied to transit projects and if so, how. We believe that conformity should not be applied to transit fares, transit route changes, or federal operating assistance for operating purposes. In a complex region like ours, this would put an impossible burden on the operators and us and would show no impact on air quality.

CO Hotspot Analysis

Better guidance is necessary on when a quantitative hotspot analysis is required for project level conformity. An issue of special concern is small projects such as those in Table 4, (i.e. small park and ride lots, signal timing/coordination, intersection channelization, bus transfer points). These projects are exempt from the regional emissions analysis but not project level conformity analysis, and a detailed analysis may be burdensome for project sponsors. We believe EPA and DOT could assist by developing case studies that would allow minor projects to be exempt.

Conclusion

We have shared a draft document of our views on each of the questions you raise in the NPRM with a statewide conformity working group. Hopefully the feedback we receive will assist us in our final response to you. In addition, the California Transportation Commission is interested in promoting a better state response and has requested that I submit the attached excerpt from their 1992 report to the Legislature on the Relationships Between Transportation and Clean Air. *

It is my hope that we can recognize the limitations of the conformity process, put the debate behind us, and get on to the real issues of improving both mobility and air quality. Thank you for the opportunity to testify. I'd be happy to respond to questions if you have any.

*Attachment not included.

STATEMENT OF
ROBERT H. MCMANUS
ACTING ADMINISTRATOR

FEDERAL TRANSIT ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 27, 1993

Mr. Chairman, Members of the Subcommittee, I am Robert McManus, Acting Administrator of the Federal Transit Administration (FTA). Thank you for this opportunity to appear before you today to report on the FTA's implementation of the Intermodal Surface Transportation Efficiency Act (ISTEA).

Let me at the outset applaud the critical role this Committee played in getting that landmark legislation enacted into law. We very much appreciate your efforts, which not only have given the agency a new name but a new sense of mission as well.

More to the point, we are also seeing increasing recognition of the key role the Federal transit program plays in transportation policy. In this regard, the Administration's budget request for the transit program for fiscal year 1994 is more than fifty percent over that requested in the last year of

the previous Administration, and twenty percent over the amounts appropriated for the current year. And we are particularly pleased that Secretary Peña has announced his support for 0.5 cents of the 2.5 cent tax on motor fuels that is now spent on deficit reduction being allocated to the transit program if the tax is extended to support transportation funding.

ISTEA OBJECTIVES

Speaking broadly, our experience to date makes us enthusiastic about administering an improved Federal transit program, and we are firmly committed to Congress' objectives in enacting ISTEA. I believe those objectives are best reflected in a new finding ISTEA added to our organic Act:

"... that significant transit improvements are necessary to achieve national goals of improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country."

Mr. Chairman, let me now report to you on the specifics of what we are doing to carry out ISTEA's mandates.

ISTEA AND FTA'S GRANT PROGRAMS

Unlike the impact of the ISTEA on the programs of the Federal Highway Administration (FHWA), the bill did not fundamentally alter our basic grant programs, but it did provide a number of important changes that improve the way in which we deliver funds to our grantees under those programs.

Under the section 3 capital program, for example, the legislation allocates funds for the fixed guideway modernization program by statutory formula. As you know, this program apportions funds to cities with older rail systems to upgrade and modernize those systems. We now publish these apportionments along with our other formula apportionments each year in the Federal Register as soon as funds are appropriated by Congress. Administering the program by formula is something we had sought, and we already are seeing its beneficial effects: the covered fixed guideway cities now are able to make longer-range financial plans based on a more assured flow of funding under the formula.

Our section 18 rural program has an increased authorized funding level in the ISTEA, and we are pleased that our fiscal year 1994 budget request seeks some \$131 million for this program. The rural program plays a critical role in helping States address the important needs of transportation in

nonurbanized areas, and the ISTEA further expands the scope of the program by requiring that a specified percentage of the funds allocated to each State be used for intercity bus activities, unless a State determines that those needs already are being met.

To help grantees take full advantage of the rural public transportation assistance available, the FTA recently revised its Section 18 program guidance, which is now widely available in the States. Further, the agency has co-sponsored a series of eight ISTEA workshops for officials from rural and small urban areas since January of this year. Finally, FTA funds the National Rural Transit Assistance Program, which supports State training and technical assistance on a range of rural transportation issues, and which has a national resource center. The resource center's toll-free number for technical assistance is (800) 547-8279.

The ISTEA also provides the States with a larger role in allocating funds under our section 8 planning program and our section 16 program for the elderly and persons with disabilities. As we expected, this aspect of the ISTEA was easy to implement and we already are seeing benefits in that the States are better able to target funds where needed.

Finally, the ISTEA makes only a few adjustments to our section 9 formula program that provides funding to all urbanized

areas, reflecting, we believe, recognition among our grantees of the streamlined and effective delivery system that has been in place for that program for some time.

FLEXIBLE FUNDING

From the perspective of the transit program, undoubtedly the most significant and innovative change mandated by the ISTEA is what we call the "flexible funding" provisions - the portions of the Federal Highway Program that have been freed up to allow decisionmakers at the State or local level to decide for themselves whether to allocate the funds to highway or transit projects. This flexibility at the local level has really begun to change profoundly the way in which transportation decisions are being made across the country. As State and local officials juggle the competing needs and demands of clean air, congestion mitigation, the Americans with Disabilities Act, and the comprehensive National Energy Policy Act, the flexible funding provisions provide funds supporting transportation solutions, not just highway or transit projects.

Specifically, under the ISTEA's flexible funding provisions, Congress provides a potential \$70 billion in funding over six years for transit or highway projects. Last year approximately \$300 million was transferred for transit use, and an additional \$168 million was transferred during the first two quarters of

this fiscal year. To date, no transit funds have been transferred for highway use. We should note that before any such transfers may occur, the ISTEA requires DOT to determine that the funds are not needed for investments required by the Americans With Disabilities Act.

As the new planning and flexibility provisions become more fully understood at the local level, we expect them to be used more frequently. In this connection, we have developed a booklet that we publish and make available to our grantees each year. Called "Flexible Funding Opportunities for Transit," it describes in detail all of the funds available in a particular fiscal year for transit under the new provisions, and our grantees tell us that it has been quite useful to them. We will continue to work closely with FHWA in administering these provisions.

PLANNING

There are a variety of new mandates - the new flexible funding opportunities, Clean Air Act requirements, meeting the needs of persons with disabilities, the new Energy Act requirements, and a host of other national policies - all of which call for increased planning and coordination at the State and local levels, as the ISTEA so accurately anticipated.

Last month, together with the FHWA, we issued three notices of proposed rulemaking to carry out ISTEA's directives on metropolitan planning, Statewide planning, and State development of surface transportation management systems. In addition, the two agencies held a series of public meetings in San Francisco, Atlanta, Philadelphia, and Kansas City to expand the opportunity for public comment on the proposed rules. The comment period on the proposals closes on May 3rd, when the two agencies will begin reviewing all of the information we have received. We are convinced the changes in transportation planning requirements mandated by the ISTEA will result in better transportation investment decisions based on improved processes, approval mechanisms, project prioritization, and life cycle costing.

TRANSIT PLANNING AND RESEARCH PROGRAM

The ISTEA restructured our approach to planning and research, providing predictable resources on a formula basis for the planning needed to implement Federal requirements and the research that will lead to modernizing transit equipment and operations. We promptly implemented the new provisions, and the effect has been to revitalize and expand FTA research programs. The ISTEA focused our new planning and research program through the following major components.

National planning and research program. The national component of the program is a catalyst for research, development and deployment of transportation methods and technologies in such areas as accessibility for the disabled, safety, air quality, traffic congestion, and service and operational improvement. In addition, as defense spending declines, an opportunity exists to adopt military technology to meet transit problems. Under this program, for example, a military aircraft manufacturer is currently working with Los Angeles to develop a lighter-weight bus using advanced materials.

We are also employing military command, control and communication technology, such as the Global Positioning System, in the operation of local bus systems through our Advanced Public Transportation Systems program.

We follow a consultative process to involve the transit industry in targeting our research activities. We conducted four national workshops on research priorities, extended our outreach to professional societies and interest groups at specialized seminars and general meetings, and convened three meetings of the Transit Industry Technology Development Advisory Committee established by ISTEA.

The national program is achieving results in our Clean Air program, which in collaboration with the Department of Energy has developed a laboratory prototype of a phosphoric acid fuel cell for bus propulsion. We are evaluating performance and emissions of several types of alternative fuel buses. Also, in conjunction with our capital program, we can now point to the availability of six alternative-fueled engines, including compressed natural gas, methanol and ethanol. Because transit operators are increasingly turning to alternate fuel bus engines, we are developing guidelines for their safe operation and maintenance and for construction of the specialized facilities they need.

We are also assisting rail transit operators in modernizing their signaling and train control systems to improve capacity and safety. Displays are being designed for commuter rail platforms to provide real-time information on arrivals, delays, and advice to passengers.

Our Advanced Public Transit Systems program is developing "smart" farecards using advanced computer chips to facilitate revenue collection and benefit both transit providers and riders.

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Our research, demonstrations and outreach programs aimed at improving transit service in compliance with the Americans With Disabilities Act have focused primarily on the National Easter Seal Society's Project ACTION, as prescribed by the ISTEA. This includes 25 local demonstration projects as well as research to identify people with disabilities and their transit needs, outreach and marketing, technology to eliminate barriers to accessibility and training for transit personnel and transit users with disabilities.

A substantial research effort has been addressed to streamline the collection and analysis of transit operating and cost data collected under section 15 of the Federal Transit Act. Also, this effort is aimed at improving data and methods used in developing comprehensive plans required by ISTEA.

Transit cooperative research program. A transit industry-oriented program administered by an independent oversight and project selection committee, this component fosters cooperation among transit suppliers, providers, and local governments. We executed a memorandum of understanding with the National Academy of Sciences and the Transit Development Corporation to manage the program with

information dissemination by the American Public Transit Association. The first year launched 32 projects, including new fare technology assessment, fitness-for-duty testing, and operating procedures for alternative fuel vehicles. The second annual agenda added 25 more projects addressing near-term problems of transit operators.

State planning and research program. Funds are available at the discretion of the States for activities permitted under FTA's research and planning programs under sections 6, 8, 10, 11, and 20 of the Federal Transit Act. The States rely heavily upon this component to meet the new state planning and management requirements instituted by ISTEA. The funds can also be used to supplement metropolitan planning and administration, at the discretion of the State.

National Transit Institute. ISTEA established a National Transit Institute at Rutgers University to support the training and development needs of the transit industry. Modeled after the National Highway Institute, the Institute has been funded, a director appointed, and an advisory committee established to

assure the program is responsive to the needs of the transit industry. Courses related to Federal requirements are being developed, and industry-sponsored programs are being identified and prioritized.

Metropolitan Planning, Rural Transit Assistance Program.

These elements of the program already have been discussed.

In short, the expanded research and planning program is generating a working partnership among various levels of government, operators, and the transit industry. This collaboration, combined with several other incentives established by ISTEA, promises a more targeted, effective transit program.

OTHER ISTEA PROVISIONS

Mr. Chairman, let me now summarize for you our progress on other mandates in the ISTEA.

Specific Projects

The legislation called for a number of multi-year grant agreements, virtually all sharing the same early deadline which, because it was so soon after the enactment of the bill, we were unable to meet. Federal requirements, particularly environmental mandates, must be addressed before we can fund a project. We thus immediately notified the affected cities, and are now

working with each of them to advance the projects to the stage where they can proceed to construction. To date we have entered into Full Funding Grant Agreements for two projects, awarded full or partial grants for another 9 projects and are negotiating final agreements for an additional 3 projects.

Other Mandates

Bus Testing. Section 6021(b) of ISTEA added a requirement to add braking and emissions tests for new bus models. A contract to include the tests and undertake the necessary facility expansion is currently being negotiated with the Pennsylvania Transportation Institute. The bus testing fee subsidy provided by Section 3009 has been incorporated into the program. Over \$1 million has been expended covering testing fees for six different manufacturers. Finally, the revolving loan fund established by Section 6021(d) has been designed and is awaiting final approval.

Turnkey Procurement Demonstration. In order to help reduce transit system construction delay and lower construction costs, Section 3019 of ISTEA establishes a Turnkey Procurement Demonstration. Following a Federal Register notice soliciting comments and consultation with the industry at a preproposal conference, we received 11 proposals on February 26th. At least three of these will be selected as demonstration sites.

Safety Report. Section 3026 of ISTEA directs the Agency to investigate transit safety conditions and report to Congress on these conditions and actions taken to address them. The required Report on Safety Conditions in Mass Transit has been drafted and is under final review prior to submission to Congress.

State Safety Responsibility. Section 3029 adds a new program requiring States to establish a fixed guideway safety program. An advance notice of proposed rulemaking on State responsibility for fixed guideway system safety was published last year. All comments received have been analyzed and the next phase of the process, a notice of proposed rulemaking, is to be issued this summer.

Charter Services Demonstration Program. Section 3040 requires the agency to undertake demonstrations of public operators providing charter services for government, civic, charitable, and other community activities. A Federal advisory committee met twice to receive comments on the proposed demonstration, and proposals to undertake the demonstration were received last December. They are being reviewed and selection of demonstration sites is expected shortly.

University Transportation Centers. Section 6023 of ISTEA creates three new University Transportation Centers in addition to the ten previously authorized. The necessary funding has been transferred to the Research and Special Projects Administration for award to all of the centers.

Advanced Transportation Systems and Electric Vehicle

Research. Section 6071 creates a program for research and development in advanced transportation systems and electric vehicles. Grants were awarded to CALSTART and the Chesapeake Consortium last September, to the New York State Consortium in January, and the Advanced Lead-Acid Battery Consortium in April.

Suspended Light Rail Transit System Technology Pilot

Project. The ISTEA established Section 26(c) requiring us to determine the feasibility, costs and benefits of using suspended passenger vehicles driven by overhead electric propulsion. After consultation with interested local groups and formal solicitation of competitive proposals, we awarded three grants to evaluate sites in Oakland, California, Montgomery County, Maryland, and Milwaukee.

OVERSIGHT

Regarding our ongoing administration of FTA programs, in response to OIG and GAO reports, as well as our own internal review, we have revamped our grants management oversight procedures into a more comprehensive process, and have strengthened our triennial reviews.

The agency also is developing a recordkeeping system to assure that all oversight information is maintained in a consistent, organized manner in each of our ten regional offices. The regional offices themselves have been reorganized to provide a more uniform and consistent emphasis on oversight. We have reassigned 40 regional staff positions to oversight and have made available the equivalent of 79 additional positions in contractor support.

TRANSIT NEEDS AND PERFORMANCE

Finally, Mr. Chairman, let me address a matter that I am certain is of interest to the Committee.

The Secretary has been required since January 1984, to report biennially to Congress on the condition and performance of mass transportation in America, and to provide estimates of the

capital dollars needed to sustain these systems over one, five, and ten year periods. The submissions in 1984, 1986, and 1988 focused primarily on transit performance, and did not address the subject of transit needs. The last two reports, issued in 1991 and 1992, addressed transit needs, with the 1992 report providing what we believe is for the first time a complete assessment.

We believe that the 1992 report presents an objective estimate of total transit needs. The report does not, however, indicate whether these needs are to be funded from Federal, State, local, or private sources. Investment needs and Federal spending are two very separate issues.

In order to advance this approach and to establish some consistency in the Department's reporting on the subject of capital needs, we have moved toward combining the needs assessments of both FHWA and FTA into a single surface transportation report to facilitate the Committee's evaluation of our programs.

The FHWA report to Congress is due each odd-numbered January, ours each even-numbered year. This year, 1993, the FHWA Report that you received in mid-January contains new and updated highway information since the last FHWA report was issued two years ago; it also contains all the information that was in the FTA report for 1992.

Our goal is to have a single report, prepared every two years. We recognize it will take legislation before we can satisfy both statutory requirements by issuing a single biennial report; meanwhile, our intention is to have each mode's formal report cover both modes, and, as in the 1993 Highway Conditions and Performance Report, include the other's data and information.

As to the investment needs, our estimates are:

- to maintain current conditions and performance, an annual capital investment from all sources of \$3.9 billion (in 1991 dollars) for mass transportation is needed;
- to improve conditions and handle the travel from the anticipated foregone highway lane miles as shown in the FHWA needs study, an additional \$3.6 billion a year for ten years is needed from all sources, for a total of \$7.5 billion per year.

In this regard, Mr. Chairman, our fiscal year 1994 request of a \$4.6 billion program level will begin to reduce the backlog of transit infrastructure needs. State and local funds, and especially the new flexible funds, offer potential sources of funds for further performance improvements.

CONCLUSION

Mr. Chairman, I would like to conclude my testimony by again emphasizing our appreciation for the Committee's role in creating a new era in surface transportation, one we at the FTA are proud to be a part of. We look forward to working with you and your staff as we continue to implement the ISTEA.

That concludes my testimony. I will be pleased to respond to any questions the Committee may have.

STATEMENT OF ROBERT MALOFSKY, LEGISLATIVE DIRECTOR,
AMALGAMATED TRANSIT UNION, ON BEHALF OF JIM LA SCALA,
INTERNATIONAL PRESIDENT, ATU

Mr. Chairman, my name is Robert A. Molofsky, I serve as legislative director for the Amalgamated Transit Union. It is my pleasure to appear here on behalf Jim La Sala, International President of the ATU.

Our union, as you know, represents over 160,000 employees in the mass transit, over-the-road and school bus industries.

We are pleased to have the opportunity to testify before this Committee regarding the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

First, however, we would like to take this opportunity to extend our congratulations to you upon assuming the Chairmanship of this Subcommittee and to again recognize the leadership provided by yourself, along with Chairman Mineta and Congressman Bud Shuster and the other members of the Public Works Committee in designing and fashioning what is universally acclaimed as landmark legislation.

As we now go forward in implementing this remarkable intermodal surface transportation assistance program, we look forward to maintaining our strong relationship with you and all members of the Committee.

Without question, the legislation fashioned by this Committee and approved by the Congress was historic. It embraces a comprehensive approach to surface transportation planning and recognizes the integrated roles all surface modes play in improving our nation's economy, transportation systems, and ultimately our competitiveness both at home and among world markets.

Among its unique attributes, we believe that the ISTEA program is notable for: a) providing extraordinary flexibility at the state and local levels with respect to project choices and decisions; b) increasing funding levels for both the nation's highways and mass transit programs, including operating assistance; c) expanding the program design and funding commitments to our rural communities; and d) providing new capital and operating assistance through the Section 18 program for the intercity bus industry.

With respect to the latter program, I would like to bring to this Committee's attention the tentative settlement reached on April 20, between our union and Greyhound Lines, Inc. resolving our three year labor dispute. Clearly, those negotiations and the ensuing strike was a most difficult period for our members, their families and the riding public. We believe the new six-year contract will provide much needed stability to the industry and provide opportunities for substantial numbers of striking employees to return to work under improved terms and conditions. Perhaps, most significantly the proposed contract contains provisions providing for a new more cooperative approach towards labor relations which will serve not only the employees' interest, but the company's and public's as well.

The ISTEA bill, also, of course, recognizes the important contribution transit labor continues to play in building, maintaining and operating our nation's transportation systems. In this regard, the retention of the Section 13(c) labor protection program, and the maintenance of the Davis-Bacon requirements

reflect this understanding.

Especially important, too, are the new limitations set through the DOT certification process on federal intervention with respect to state and local decisions regarding the choice of public or private providers of transit service.

Program Implementation

Since the passage of ISTEA, the ATU has undertaken a series of programs to assist in its implementation.

First, our local officers and members in some 46 states have been informed as to the Act's provisions and the new opportunities provided for participating in the MPO and state-wide planning processes. These are critical components not only for transit labor, but to a broad array of groups concerned about our nation's transportation programs.

We are now working with the American Public Transit Association (APTA), the Surface Transportation Policy Project (STPP) and other groups to ensure that the final regulations implementing these programs carry out the Act's mandate of affording transit labor and other groups a real opportunity to participate in the process. In this regard, several recommendations are being framed to require early notice to all parties as to proposed plans and projects with ample time to respond to those proposals.

In our experience membership on the metropolitan planning organizations (MPO's) is critical to ensuring that the project

flexibility provided for in the bill becomes a reality. To this end, we strongly recommend that transit agencies and their employee representatives be represented on all Metropolitan Planning Organizations (MPO's) regardless of whether MPO's are reorganized. Far too many MPOs, including those in major urban areas, do not have these organization included as voting members. We believe legislation to mandate this approach would be helpful to enhance local and regional decision-making.

Second, we are participating in a series of coalitions at the state and local level to secure increased funding to ensure that the funds provided through the federal program can be made available to our communities.

Thirdly, we are continuing to work with transit grant recipients, the Department of Labor and the FTA to ensure the timely and effective processing of the Section 13(c) requirements under the Act. We continue to place priority on moving projects as expeditiously as possible. Unfortunately, we continue to experience difficulties with certain projects arising from FTA interference with the Department of Labor's certification and case processing. We hope that these issues can be resolved at the Agency level.

Future Needs and Directions

There are several areas which we would like to bring to the Committee's attention. First, while the Committee provided historic funding increases for both the highway and mass transit

programs, budget and other constraints continue to produce annual appropriation levels far lower for mass transit programs than that authorized under the ISTEA legislation. This is especially serious in view of the mounting financial burdens placed on state and local governments and all transit grant recipients arising from requirements under the Americans with Disabilities Act, the Clean Air Act Amendments, as well as the new drug and alcohol testing requirements which will be finalized in late 1993.

We have separately submitted to this Committee a transportation labor policy brief outlining our concerns in this area. In that paper, we call for increased operating assistance in FY'94 and beyond to meet these rising costs.

We are proposing the creation of a "Transit Safety, Service and Standards Fund" which will target increases in federal operating assistance to help fund the extraordinary operational expenses imposed by these vital yet costly federal mandates. Current appropriated levels for operating assistance remain well below those authorized by the ISTEA legislation. The new fund would essentially bring mass transit spending up to the levels set by your Committee, but would dedicate the increased funds largely to meet the new federally imposed costs.

The "Safety" aspect of the program is designed to address the new drug and alcohol testing requirements which will impose costs conservatively estimated at between \$20-25 million per year.

The "Service" aspect of the program would be used to support the operational expenses required to implement the new ADA service

requirements. Annual estimates by the American Public Transit Association (APTA) and other industry sources place ADA operational costs at well over \$200 million annually.

Finally, the "Standards" portion of the fund would address the operational needs for installing and maintaining the equipment required to meet the new standards imposed by the Clean Air Act. These costs have been estimated and documented in excess of \$100 million per year.

It makes no sense to devote increasing resources to the capital program if insufficient funds remain to ensure the necessary maintenance and operation of these vital services.

We look forward to working with you and the respective Appropriations Committees as debate on this program unfolds to ensure its appropriate design and implementation.

We, of course, join with APTA and other groups appearing before you in calling for full funding of the entire Federal Transit program as authorized in ISTEA. This is critical to the effective implementation of the law and necessary to correct years of funding short falls for transit. Particular attention should be placed on remedying the recent reductions in the Section 9 formula program. Actual funding for the formula program in FY'93, for example, was set at 60 percent of the authorized level, while discretionary funding was set at 85 percent of the authorized amount.

Finally, we again call for further increases approaching seven cents per gallon in the Federal gas tax dedicated to the Federal

transit program. In the near term, we support the Administration's proposal to extend the 2.5 cents per gallon federal gas tax beyond 1995 with at least 20 percent of this tax earmarked for the Mass Transit Account of the Highway Trust Fund.

In closing, we want to join with our counterparts in the industry and express support for APTA's presentation and justification of "America's New Surface Transportation Network." It will truly aid the Congress and the Department of Transportation in assuring that the intermodal vision of the 1991 legislation is properly realized.

We again thank-you for the opportunity to offer our views on the ISTEA legislation and look forward to working with this Committee as we together strive to meet the transit challenges of the next century.

Thank you and we would be pleased to respond to any questions or comments.



POLICY BRIEF

PB NO.1

April 20, 1993

Transit Safety, Service and Standards Fund

REEXAMINE FEDERAL TRANSIT POLICY

The growing demands placed on local transit operators — from mandated drug and alcohol testing to requirements imposed by the Americans with Disabilities Act (ADA) and the Clean Air Act — are making it apparent that current policy on federal operating assistance must be reexamined with an eye toward funding unfunded mandates imposed on the industry.

Current government policy is requiring state and local governments to continually do more with less.

Clearly, since these newly imposed costs have not been offset by increases in federal operating assistance, current government policy is requiring state and local governments to continually *do more with less*. This policy must be changed if America is to accomplish the ambitious transportation infrastructure goals set out by the Clinton Administration.

To address this growing industry concern, it will be necessary to target increases in federal operating assistance for FY94 to fund the extraordinary operational expenses imposed on state and local governments and all federal transit grant recipients. In each case, the new obligations require federal transit grant recipients to devote a substantial amount of additional operating revenues to ensure full compliance. And since operating assistance levels remain well below authorized levels in the

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), these requirements will have to be met at the expense of service enhancements and expansion programs.

In the short-term, operating assistance should be increased above the current \$802 million to help fulfill the new federally imposed mandates. Increases in federal funds should be implemented within the authorized limits of the ISTEA legislation and dedicated largely to meeting the costs imposed by the new requirements. This view is shared by employees and the industry, as well as a wide array of constituent groups concerned about the future of public transit services.

TRANSIT SAFETY, SERVICE AND STANDARDS FUND

We are recommending the creation of the "Transit Safety, Service and Standards Fund" for the specific purpose of making federal assistance available to help offset the new costs faced by all transit grant recipients. The appropriated increase between the \$802 million and the authorized ceiling of \$1.1 billion, however, would be reserved largely to fulfill the requirements imposed by drug and alcohol testing, as well as ADA and clean air standards.

The "Safety" aspect of this grant is designed to specifically address the new drug and alcohol testing requirements which as amplified below will impose costs conservatively estimated at between \$20-25 million per year.

The "Service" aspect of the program would be used to support the operational expenses required to implement the new ADA service requirements. Annual estimates by the American Public Transit Association (APTA) and other industry sources place ADA-related costs

TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

at well over \$200 million annually. New Jersey Transit, for example, has estimated its costs in this area to exceed \$20 million per year.

Finally, the "Standards" portions will address the operational needs for installing and maintaining the equipment required to meet the new standards imposed by the Clean Air Act. These costs have been estimated and documented in excess of \$100 million per year.

Using industry projections, the combined annual expenses under these programs will exceed the \$230 million differential between the appropriated amount and that permitted under the ISTEA legislation.

BACKGROUND

Historically, since 1981 federal transit investment has been well below authorized levels. Operating assistance in particular has fallen during this period from a peak of over \$1 billion annually to just \$802 million in FY93. In fact, operating assistance has remained stagnant at that level since at least 1986 despite authorizations permitting increases in excess of \$1.1 billion.

New federal mandates have placed a significant federal burden on cash-short state and local governments and federal transit grant recipients.

Over this time, the operating costs required for the maintenance of existing service as well as meeting enhanced service needs and the new federal mandates have placed a significant financial burden on cash-short state and local governments and federal transit grant recipients. This strain has increased dramatically since 1990 with the enactment of the Clean Air Act amendments, the new ADA requirements and the drug and alcohol testing programs which will be finalized later this year.

In 1981, federal assistance was 15 percent of all transit operating revenue; by 1990 the

federal share had dropped to under five percent. Federal operating assistance appropriated for urbanized areas declined by 56 percent in constant dollars between 1980 and 1992. In contrast, between 1980 and 1990, fares increased by 32 percent in constant dollars and state and local operating aid increased by 69 percent in real terms.

Past efforts to secure increases in federal operating assistance have failed to overcome pressures raised within the Appropriations and other committees to contain those funding levels in the face of the increasing federal deficit, the fast payout schedule for operating assistance, and competition from the ever present capital needs programs. Now, however, given the new federal obligations placed on transit grant recipients there is an absolute need to provide for an increase in funding.

TRANSIT SAFETY DRUG AND ALCOHOL TESTING

Drug and alcohol testing regulations issued on December 14, 1992, are expected to be finalized later this year. These regulations will require all federal transit grant recipients to perform a comprehensive range of mandatory drug and alcohol testing upon covered employees including random, reasonable suspicion, post-accident, return-to-work and follow-up testing. The requirements are expected to include mandatory random testing components which may approach 50 percent of the work force on an annual basis.

Other requirements in the regulations command every transit grant recipient to contract for the services of a substance abuse professional, medical review officer and to otherwise purchase the necessary drug and alcohol testing equipment to perform the tests. In addition, the responsibilities for education, training and rehabilitation for employees testing positive will contribute to operational costs as this program is implemented.

Conservative estimates indicate that the cost of this new program will range from \$20-25 million. This figure is based on the universe of some 200,000 affected employees. Subjecting

up to 50 percent of these employees to both random drug and alcohol testing, at a minimum of once a year, would cost at least \$15 million annually.

In this regard, various estimates indicate that the combined alcohol and drug tests are expected to cost between \$100 and \$150 for each series of tests. This base cost combined with the additional expenses involving personnel education, training and rehabilitation programs will easily bring the annual figure to \$25 million. The goals and objectives of this program will therefore be difficult to fulfill unless the necessary resources are provided.

Conservative estimates indicate that the cost of this new program will range from \$20-25 million.

TRANSIT SERVICE ADA ACT REQUIREMENTS

With the enactment of the ADA in 1990, Congress sought to make all public facilities, including mass transit services, accessible to disabled and elderly Americans, many of whom otherwise have no legitimate means of transportation. This landmark legislation was a public policy decision recognizing the dire needs of the disabled and elderly. But with this recognition came a new unfunded federal mandate, the cost of which is to be born by public transportation providers nationwide unless the Transit Safety, Service and Standards Fund is created.

The mandatory lift equipment and paratransit service requirements included in the ADA will not only require the purchase of new capital equipment, but the use of additional drivers and maintenance employees to ensure that the expected service operations for the disabled are provided. The figures compiled by APTA indicate that these operational expenses will be in excess of \$200 million per year.

The industry has further noted a growing trend among health and human service agencies discontinuing their transportation services for their clients and essentially "dumping" them on the local public transit system that is required to provide service under the ADA. This practice, too, adds a tremendous financial burden on systems already facing challenging financial struggles.

TRANSIT STANDARDS CLEAN AIR ACT REQUIREMENTS

The unfunded Clean Air Act mandates now in place compel every federal transit grant recipient to purchase the necessary vehicles and other equipment to reduce bus emissions and enable the transit authority to otherwise comply with the Act's requirements. The annual costs to install exhaust cleaners and upgrade fuel standards is \$110 million. Additional diesel fuel costs alone are estimated to be almost \$57 million annually.

FINAL OBSERVATIONS

Transit advocates have presented significant testimony before both the House and Senate Appropriations Committees justifying the need to fully fund the mass transit component of the ISTEA. It is beyond question that both the capital and operating needs of the industry cannot be met unless funding reaches that level.

As the Congress and the Administration focus on these issues, we believe that a compelling case exists to justify that the increases agreed upon for the Section 9 Program include a targeted increase in operating assistance to meet the new Transit Safety, Service and Standards requirements.

Transportation labor looks forward to working with the Appropriations Committees and the Department of Transportation to discuss ways in which this funding increase can be achieved as part of a balanced Section 9 program.

For more information contact the Transportation Trades Department, 400 North Capitol Street, N. W., Suite 861, Washington, D. C. 20001, (202) 628-9262.



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1440 New York Avenue, N.W., Suite 440 Washington, D.C. 20005 (202) 628-1480 • FAX (202) 737-9197

STATEMENT OF
DAVID MARSH, EXECUTIVE DIRECTOR
CAPITAL AREA RURAL TRANSIT SYSTEM (CARTS), AUSTIN, TEXAS

ON BEHALF OF
COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA (CTAA)

BEFORE

SUBCOMMITTEE ON SURFACE TRANSPORTATION
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

APRIL 27, 1993

**STATEMENT BY DAVID MARSH
EXECUTIVE DIRECTOR, CAPITAL AREA RURAL TRANSIT SYSTEM
PRESIDENT, COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA**

Chairman Rahall and members of the committee, I am David Marsh and I serve as Executive Director of CARTS, a Section 18-funded rural transit system serving a 7,500 square mile area around Austin, Texas. Our system operates 75 vehicles and provides 350,000 trips per year, about 15 percent of those involving journey-to-work or to job-training and another 25 percent providing access to health care. Our service connects with Capital Metro transit in Austin and we share terminal facilities with intercity carriers in two of our cities. We are, I hope, a good example of coordinated public transportation on an areawide basis.

I am also currently serving as President of the Community Transportation Association of America, a national membership organization of rural, small urban and specialized transportation providers and advocates. I am accompanied by Mayor Vernon Richards, of Smithville, Texas, in our service area, and by my colleagues, Vickie Shaffer, General Manager of Tri-State Transit, in Huntington, West Virginia and Eric Menzer, Executive Director of Community Transit, York, Pennsylvania.

We all appreciate the invitation to appear before the committee in connection with your oversight of transit legislation and particularly the implementation of the Intermodal Surface Transportation Efficiency Act (ISTEA). This committee has every reason to be proud of its work on that legislation and we are grateful for this opportunity to thank you for it as well as discuss some of the issues that may merit some "fine-tuning."

What we call "community transportation" has a number of components, including more than 1,200 rural public transportation systems funded under Section 18 of the Federal Transit Act, another 200-plus transit systems serving smaller urban areas and funded under Section 9(a)(1), and a very large number of community agencies which help meet the special transportation needs of specific client groups. Some of this latter group of specialized transit providers receive capital assistance under Section 16 of the Transit Act, but nearly all of them depend on other sources for their operating funds, usually from human service programs administered by the Department of Health and Human Services.

One of the key characteristics of the community transportation network, and especially the public transportation part of it, is the extent to which the focus of our activities is people who have no mobility alternatives -- the people we call the "transit dependent": the elderly, people with disabilities and low-income households.

Nearly 40 percent of the ridership of Section 18 providers

is elderly, a share more than twice their share of the population. Operators report that 40 percent of the trips they provide are in connection with health care or other specific social services. A comparison of transit bus riders in Florida found that more than 60 percent of the ridership on the rural and small urban systems had incomes of less than \$15,000, while the comparable figure for the metropolitan system was 13 percent. These figures reflect the fact that public transportation is often the vital link for transit dependent people -- to jobs and job-training, to health care and to continued independence in living arrangements.

Federal Transit Administration data also make it clear that rural and small urban transit is the most dependent on Federal funds for its operations. The Sec. 18 and Sec. 9(a)(1) network relies on FTA funds for 25 percent of its operating budget. For urbanized areas of 200,000 to a million in population, the figure is half that, and for systems serving areas of a million or more, FTA funds make up only 4 percent of the total. This means, for instance, that an "across-the-board" reduction in formula funding -- such as occurred in last year's appropriations -- does not really affect everyone equally. It is significantly more painful for the rural and small urban operators.

The more than 1,400 FTA-funded rural and small urban public transportation agencies provide more than 300 million trips a year, at least one-third of them in rural areas. But the availability of this alternative for travel is far from universal. In more than 900 of the nation's 2,400 nonmetropolitan counties, there is currently no FTA-assisted public transportation service. In those counties where service exists, it is often confined to only part of the county or is infrequent in character or both. When the Census Bureau, in 1989, asked households in nonmetropolitan towns of 2,500 or more about the availability of public transportation, two-thirds of them reported that there is none.

Thanks in large part to the efforts of Congressman Rahall, ISTEA's enactment two years ago took us a major step toward more balanced transit assistance. That landmark legislation also speaks in a significant way to the issue of balance in the broader arena of surface transportation policy -- by making a large part of funding previously limited to highway activities intermodally flexible and by providing for an ongoing planning process that requires giving full consideration to transit as well as highway needs in all areas. ISTEA should mark the end of the myth that transit is for cities and highways for rural areas. All areas need both.

Personally, I believe that increased public investment in public transportation in rural and small urban areas as well as in large metropolitan centers really represents an attempt to recreate something that existed in this nation to a far greater

necessary. We would urge authorization and requirement, possibly over a two-year period, of a three-step initiative: First, an immediate updating of FTA's 1989 inventory of existing rural providers, their service areas and their levels of service; Second, the development of criteria usable with census data to identify those dependent on public transportation for their basic mobility needs and the establishment of a minimum level of service appropriate to those needs; and Third, classification of all nonmetropolitan counties in terms of the relationship between current service and the level required to meet basic needs. Such an inventory and analysis would not only quantify the extent of unmet needs but would enable federal and state policy makers to better target limited resources.

Intercity Bus Assistance - ISTEA responds to the very real problem of declining intercity bus service in a way that CTAA feels is harmful to the rest of rural public transportation without being all that helpful to the intercity problem itself. The Sec. 18(i) set-aside in the final version of the act diverts significant resources from each state's regular Sec. 18 program without providing assistance which is at the level or in the form probably most needed by intercity service. If unchanged, that diversion could nearly quadruple between the first and third years while the rest of Sec. 18 funding reflects only a modest increase.

At the same time, the funding available to Sec. 18(i) has been characterized by New York's Department of Transportation as "too little and too late." It amounts to less than a quarter of a million dollars in current year funding in four-fifths of the states. This may be one reason that most states have so far simply set the funds aside while they try to figure out how best to use them.

It has always been CTAA's contention that intercity bus assistance, like essential air service and essential rail service, are national concerns that should not be met by diverting resources from FTA's already underfunded rural program. A separate program with separate funding is needed if we are to adequately address intercity problems. A funding level equivalent to less than 1 percent of all formula assistance would provide the program with funding equivalent to the 18(i) level and if equally shared would avoid the unfair burden the current arrangement places on the Sec. 18 program. It is also our conviction that the some part of the need for intercity assistance could well be met by low-interest loans for capital investments to help the industry modernize and adjust to the deregulated environment, rather than operating subsidies.

Linking RTAP Funding to Total Assistance - Yet another victim of the difference between authorization levels and appropriations has been the Rural Transit Assistance Program (RTAP) authorized by Sec. 18(h). This program, which is implemented by a national-

STATEMENT OF R. ERIC MENZER, COMMUNITY TRANSIT
ON BEHALF OF THE
COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA
SURFACE TRANSPORTATION COMMITTEE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

April 27, 1993

Good morning Mr. Chairman and members of the Committee. My name is Eric Menzer, and I am the Executive Director of Community Transit in York, Pennsylvania. I also serve as Senior Vice President of the Pennsylvania Association of Municipal Transit Authorities (PAMTA) and Secretary and Legislative Committee Chairman for the Pennsylvania Association for Community Transportation (PACT). Thank you for the opportunity to appear before you today to discuss issues arising out of the implementation of ISTEA, and the challenges we face providing public transit services in small urban and rural areas.

Community Transit operates 54 vehicles providing fixed-route and paratransit service in York County, Pennsylvania; we carry approximately 1,100,000 passengers annually. The system is an alliance of two organizations, one a non-profit corporation and the other a public transit authority. We receive operating funding from the Sections 9 and 18 programs as well as numerous state and human-service funding sources to support a \$3.8 million annual budget. We also receive Section 16 capital funding and are currently participating in a consolidated, statewide Section 3 bus procurement. The York urbanized area population is 150,000 and the

County population is 360,000. We operate in a County which had the fastest-growing population in Pennsylvania in 1991, is a non-attainment area for ozone and has a significant commuter population heading to Baltimore daily, yet we regularly serve rural passengers whose homes have no indoor plumbing and who call us from a local general store because they have no telephone.

I want to tell you first today of an ISTEA success story, yet one which raises interesting questions about where the federal transit program is headed. I was informed just one week ago that Community Transit has been awarded a \$650,000 grant from the Congestion Mitigation and Air Quality (CMAQ) program. With these funds, we will start a carpool matching program for commuters and undertake a significant marketing program designed to increase ridership on our fixed-route system by 15 percent. While I was frustrated that it took almost 18 months for the Pennsylvania Department of Transportation to make its first statewide allocation of CMAQ funds, this project is an example of flexible funding at work.

At the same time, however, we are struggling to avoid service cuts as increases in expenses, flat or reduced operating assistance and the increasing demands of ADA, drug testing and the Clean Air Act strain our ability to make ends meet. So at the same time that we are spending over \$650,000 in CMAQ funds to encourage people to try public transit we are reducing service levels. In my system's case we are not talking about the whether a bus arrives every eight minutes instead of every five, but rather whether a bus arrives every hour

instead of every 30 minutes, and in some cases if it arrives at all. We have enough of a job convincing the public in small cities to try transit as a clean air solution at the service levels we operate now, much less at reduced levels. You undoubtedly hear many claims that money is the answer to various problems, and, in fact, money is not necessarily the answer to all of the transit industry's challenges, but it is, plain and simple, the problem in this case.

Of course ISTEA-authorized funding levels, if reached, would go a long way towards solving this problem. But just full funding of the \$5.3 billion FY 94 authorized level is not enough if funding is not balanced between formula and discretionary programs, and if operating assistance, in particular, is not increased. While federal operating assistance is important to all systems, it funds about 36 percent of my budget and a similar percentage for other small systems as opposed to about 4 percent, on average, for systems in urbanized areas with populations over 1,000,000. We suggest a legislative solution, along the lines outlined by David Marsh in his earlier testimony, which would require the "blending" of all newly appropriated funds in order to maintain the balance within the ISTEA framework.

Of particular frustration if the formula program does not grow and the discretionary program does is the fact that large amounts of funding sit tied-up while slow planning processes for major construction projects grind along. It is difficult to accept the fact that discretionary bus funding is not available for truly "ready-to-go" procurements while hundreds of millions of dollars sit unused in the new-starts, rail modernization and even discretionary bus portions of the program. Perhaps "use-it-or-lose-it" time limits on Section 3 funds, with

reasonable deadlines that recognize the differences in complexity of a new start versus a bus procurement, should be considered in the next authorization bill.

As we face this situation in our urbanized system, the level of service in the rural portions of our county are much lower. Our Section 18 program provides service in just one portion of the County, and receives about 1/20th of the level of funding annually as our urban program. This is not atypical of the situation nationally. For instance, annual per capita transit spending ranges from \$35 in the largest urban areas to \$7.79 in small urban areas. But we spend only \$1.50 per capita annually on transit in rural areas. To address this situation, we would like to see a major needs assessment started now, in preparation for the reauthorization of ISTEA, to quantify the transit-dependent population nationally, estimate actual unmet transit needs, and establish minimum service levels for communities of all sizes.

Finally, going back to a success story before I close, I want to tell you in particular about the success of the RTAP program in Pennsylvania, and urge you to find a legislative mechanism to ensure that this program grows as the total ISTEA program grows. In Pennsylvania, RTAP is currently funding the salary of a full-time training coordinator who manages six training contractors presenting programs ranging from small-vehicle air condition maintenance to fixed-route schedule planning techniques. For most of the systems sending employees to these sessions these are the only training activities they can afford. Within the past year hundreds of mechanics, driver trainers, dispatchers and managers in Pennsylvania have attended these programs. The RTAP program is not funding esoteric studies, rather, it is

providing cost-effective technical assistance for rural systems nationwide. To ensure that this continues and expands, we propose that RTAP receive a permanent, off-the-top set-aside of .15 percent of the FTA budget.

Thank you for the opportunity to speak to you today, and I would be happy to answer any questions you might have.



Campaign for New Transportation Priorities

900 Second Street, NE, Suite 308
Washington, DC 20002

Phone (202) 408-8362
Fax (202) 408-8287

Steering Committee

Harriet Parcells
National Association of
Railroad Passengers

Michael Replogle
Environmental
Defense Fund

Nancy Hirsh
Environmental Action

Andy Clarke
Bicycle Federation

Robert Molofsky
Amalgamated Transit Union

Sara R. Nichols
Clean Air Council

Hal Hiemstra
Rails to Trails Conservancy

John Holtzclaw
Sierra Club

Ross Capon
National Association
of Railroad Passengers

Brent Blackwelder
Friends of the Earth

Testimony of Harriet Parcells, Project Director
Campaign for New Transportation Priorities
before the
Committee on Public Works and Transportation
Subcommittee on Surface Transportation
April 27, 1993

OVERSIGHT HEARINGS ON IMPLEMENTATION OF ISTEA

Thank you Mr. Chairman and Members of the Committee for the opportunity to present the views of the Campaign for New Transportation Priorities (CNTP) on how implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is proceeding. My name is Harriet Parcells and I am the Project Director of CNTP, a coalition of 48 national environmental, labor and local transit and consumer groups working together for a more balanced and sustainable national transportation system.

We wish to express first of all our strong support for the ISTEA legislation and our appreciation to the Chairman and all Members of the Committee whose vision, dedication and long hours made possible its enactment. It is truly a watershed transportation bill that provides the country with the opportunities and framework needed to create a more integrated, energy-efficient and clean national transportation system.

ISTEA's greatly increased Federal funding for mass transit, unprecedented flexibility in the use of highway funds, emphasis on intermodalism and enhanced transportation planning process and public participation allow states and metropolitan areas to provide mobility in a manner that supports attainment of the health-based standards in the Clean Air Act Amendments of 1990 (CAAA), reduced dependence on foreign oil, more liveable communities and other important national goals.

How ISTEA is implemented, however, determines the extent to which the spirit of the law and changes it is intended to bring about are achieved. With the perspective of slightly more than one year since ISTEA's enactment, we see evidence of positive changes occurring. We are deeply troubled, however, by the failure of many states and metropolitan areas to adequately use--or use at all--ISTEA's flexible funding programs to increase funding for mass transit and other clean alternatives to driving, by inadequate funding to the MPO's to support new planning and modeling activities and by inadequate efforts to involve the public in the planning process as envisioned in ISTEA.



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In short, the reality of ISTEA is falling short of its promise. I would like to address our comments to these shortfalls and some thoughts on possible actions that might be undertaken to remedy them.

I. Actual Funding for Transit vs. ISTEA's Authorized levels

While we are well aware that the actual appropriation for mass transit--compared to the ISTEA authorized level--is beyond the jurisdiction of this Committee, we wish to voice our concern about the shortfall in transit funding that has occurred. ISTEA authorized \$5.2 billion for mass transit in FY 1993 but actual appropriations were 37% less or \$3.8 billion. This represents a mere 1% increase above transit's \$3.7 billion in FY 1992. For FY 1994, President Clinton's budget recommends \$4.6 billion for the Federal Transit Administration, a welcome and needed 21% increase over FY 1993, but a funding level that still falls short of the level authorized by ISTEA. This is particularly disturbing given that the FY 1994 budget calls for full funding of the ISTEA levels for the federal highway program.

The seriousness of the transit funding shortfall is underscored by the large unmet needs facing transit systems across the country. Transit suffered a serious decline in funding throughout the 1980's--a 50% reduction when inflation is taken into account--that strained the budgets of transit authorities nationwide and led to undesirable fare increases and/or service reductions. Added to this, transit systems face substantial costs to meet the requirements of the Americans with Disabilities Act of 1990 (ADA) and the CAAA of 1990. Even ISTEA's increased funding levels for transit do not adequately address transit capital and operating needs. Full funding of the ISTEA funding levels for transit is essential. The transit funding shortfalls undermine the ability of the country to provide the clean, energy-efficient mobility envisioned in ISTEA.

II. STATES FAIL TO ADEQUATELY USE FLEXIBLE FUNDING PROGRAMS FOR TRANSIT AND OTHER CLEAN MODES:

ISTEA's flexible funding programs are a unique and crucial part of the legislation. The Surface Transportation Program (STP) and Congestion Management and Air Quality Improvement Program (CMAQ) are two key programs that allow funds to be directly transferred to transit capital projects and other alternatives to driving. There was great expectation that a significant portion of these program funds would be used to fund various clean, energy-efficient alternatives to driving--projects crucial to helping "non-attainment" regions of the country achieve the healthy air standards of the CAAA.

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Some \$10.4 billion in flexible funding was available in FY 1992. Yet, only \$302 million in flexible funding was made available for use on transit projects in FY 1992 (of this, \$244 million was obligated in FY 1992 and the remainder in FY 1993). While this \$300 million is an important source of funding for transit, it is clearly only a small fraction of the potential funding that could have been flexed to transit or other clean mode projects.

Due to the way the highway program works, many states reached their obligation ceilings for highway spending in FY 1992 without obligating much or, in some cases, any CMAQ or STP funds. Nearly 35% of all available STP funds and nearly 60% of available CMAQ funds were left unobligated in FY 1992 because states met their highway obligation ceilings through other programs (ie, NHS, Bridge Program and others).

● Of 39 states which have 1 or more non-attainment areas for ozone and/or carbon monoxide, 9 failed to obligate any CMAQ funds in FY 1992. These states and the amount left unobligated are: Texas (\$80.4 million); Florida (\$24.2 m); Missouri (\$8.0 m); Alabama (\$4.0 m); Minnesota (\$4.0 m); Montana (\$4.0 m); Nevada (\$4.0 m); New Hampshire (\$4.0 m) and South Carolina (\$4.0 m).

● The states of Pennsylvania, Michigan and Louisiana (all with significant air quality problems) left 98% of their CMAQ funds unobligated: Pennsylvania (\$48.0 million unobligated); Michigan (\$23.4 m unoblig.) and Louisiana (\$4.0 m unoblig).

● While all states obligated at least some of their STP funds, what is quite alarming is that major metropolitan areas throughout the country did not receive any STP funds due to them. The states of Arkansas, Connecticut, Iowa, Nevada and New Hampshire failed to provide any of the urbanized areas with over 200,000 population in their states with any STP funds. Urbanized areas that didn't receive any STP funds include: Fresno (\$2.2 million) and Bakersfield (\$1.5 m) in CA; Philadelphia (\$6.4 m) and Pittsburgh (\$3.3 m) in PA; New Haven, CT (\$3.1 m); Seattle, WA (\$6.5 m); Toledo, OH (\$2.1 m); Fort Wayne, IN (\$2.1 m); Des Moines, IA (\$3.0 m); New Orleans (\$6.4 m), LA; Las Vegas, NV (\$5.3 m); El Paso, TX (\$4.3 m).

The failure of states to take advantage of ISTEA's flexible funding programs undercuts a fundamental part of the legislation and keeps funds flowing to traditional highway needs or "business as usual." Most disturbing is the fact that states seem to be ignoring the needs of many of the country's major metropolitan areas, depriving them of funds desperately needed to address the serious congestion, air quality and other problems they face.

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We urge the Committee to monitor this and ensure that in future years, this does not become a pattern and that states take greater advantage of the flexible funding programs and especially, that the urbanized areas over 200,000 population receive their fair share of these funds.

III. APPLICATION OF ISTEA TO INTERCITY PASSENGER RAIL NEEDS

As a coalition that cares deeply about the future of the nation's passenger railroad system, we were disappointed in the failure of ISTEA to include the Senate-passed language making intercity passenger rail generally eligible for STP funding. We continue to believe that future inclusion of such intercity passenger rail eligibility would strengthen ISTEA and provide states with an important additional means of alleviating congestion and air pollution and creating a more energy-efficient transport network.

The state of North Carolina is looking to improved intercity rail as an important component of its transportation network. The state has used its own funds to buy refurbished coach cars and locomotives to initiate a new "Piedmont" rail service that should start this summer. North Carolina's DOT, however, was firmly rebuffed by FHWA when it applied for \$9.8 million under the STP program to make improvements to rail service along the congested, high profile Raleigh to Charlotte corridor--even though this corridor has been designated as one of ISTEA's Sec. 1010 High Speed Rail Corridors. The state is seeking to develop the rail route because of growing highway congestion on I-85 and I-40 which parallel the route where Amtrak provides passenger rail service. The FHWA rejection runs counter to the spirit of ISTEA and its emphasis on creating a more efficient, integrated and intermodal transportation system. We feel strongly that ISTEA should be working to help states use all sound and energy-efficient means of addressing their congestion and air pollution problems. We hope the Committee can look toward a more open interpretation of the STP program so that worthy projects such as this can be funded.

On the other hand, we are encouraged to see that many states are beginning to use some of their enhancement monies to rehabilitate and restore historic railroad stations, an eligible activity under the Enhancements Program. North Carolina, for example, will use enhancement funds to restore stations at Rocky Mount, Selma and Wilson, all located along the current Amtrak route. Efforts are underway to use Enhancement funds to restore beautiful Worcester Union Station in Massachusetts and turn the historic facility into a multi-modal terminal. Connecticut is using enhancement funds for historic Hartford Union Station Transportation Center. Many other examples could be cited.

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IV. TRANSIT RESEARCH AND PLANNING NOT GETTING NEEDED FUNDING

ISTEA placed a welcome new emphasis on transit research and planning. For the first time, a fixed percent (3%) of FTA funding is earmarked for transit research and planning. Yet, a look at the appropriations for FY 92 and FY 93 shows many of the transit research and planning programs getting far less than ISTEA authorized levels.

FTA's National Research and Planning Program received only \$24 million in FY 93, compared to \$45 million authorized in ISTEA. This represented about a 30% decrease from the FY 92 appropriation. The President's FY 94 budget does not call for an increase in funding of this program. Funds to MPO research and planning (MPO's receive 45% of the 3%) to help them address new planning, modeling and research needs is also far below ISTEA authorization. In FY 93, MPO's were appropriated only \$38.25 million for transit research and planning vs. \$70 million authorized in ISTEA. The State Transit Planning and Research Program was appropriated just over 50% of the ISTEA level in FY 93 (\$7.75 million vs \$14.96 in ISTEA) as was the Transit Cooperative Research Program (TCRP).

Transit authorities around the country are stretched far too thin trying to meet basic capital and operating needs to be able to address the research and planning issues the funds for the National Program are intended to support. And, the inadequate transit planning and research funds to the MPO's hinders the ability of the MPO's to address the important new regional planning requirements of ISTEA.

V. THE NATIONAL COMMISSION ON INTERMODALISM NEEDS A FUNDING BASE

We strongly support the emphasis Congress placed in ISTEA on "intermodalism" to create a more integrated and efficient transport network. To this end, we support the National Commission on Intermodalism that was established under the law. The National Commission, which consists of a range of appointed individuals, representing various organizations as well as a number of private citizens, is apparently off to a great start.

However, the National Commission was never given any funding under ISTEA. This has placed a great burden on the Commission, especially on the private citizens who, having no national organization backing them, must draw on personal incomes to travel to and from meetings, participate in conference calls and other Commission-related matters. Moreover, the National Commission was required to prepare a report to Congress on the

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status of intermodal shipments and activities in the U.S., due in September 1993. Yet, no funds were authorized for this task. We strongly urge the Committee to remedy this situation so that the dedicated individuals serving on the Commission are better able to carry out this important work. We believe funding on the order of \$1-1.5 million would address the National Commission's research and other needs.

VI. PUBLIC PARTICIPATION IN THE TRANSPORTATION PLANNING PROCESS

Overlaying ISTEA's new funding programs is a strengthened, more comprehensive regional planning process and a requirement for the development of statewide transportation plans for the first time. ISTEA calls for greatly enhanced public participation in both metropolitan and statewide planning. Public participation is intended to be an integral part of the planning process, with the public brought in early and on a continuing basis. The purpose is to allow the public to have a real influence on the planning process and projects selected for funding. The improved planning and public participation lie at the heart of ISTEA. How they are carried out will have a fundamental impact on whether the legislation's intended reforms are realized. We thank the Members of this Committee and other Members of Congress for their vision and recognition of the importance of better planning and public involvement.

From discussions we have had with citizen groups around the country in recent months, there appears to be an overriding sense that meaningful opportunity for public involvement has been far less than expected and needs substantial improvement. Philadelphia's MPO gave the public just one week to comment on its first TIP and no opportunity to comment on its conformity analysis with the CAAA. Here in the Washington D.C. region, a public hearing was held only 2 weeks prior to the date scheduled for the TIP adoption.

Promising developments are taking place, though. In the Washington D.C. region, for example, a new Citizens Advisory Committee to the region's MPO has been established that should provide for ongoing and much improved public participation in the future. In addition, the MWCOC modified its by-laws to allow the Transportation Planning Board (TPB) to call special meetings for public comment and to allot time for public comment at the beginning of each TPB meeting. MPOs in other parts of the country are also bringing citizens onto advisory committees where hopefully they will have a better opportunity for input. Significant improvements in public participation are needed, however, in the months/years ahead if citizens are to have timely and effective opportunities for input.

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VII. THE NEED FOR A "STRATEGIC SURFACE TRANSPORTATION NETWORK"

We urge the Committee to consider the designation of a "Strategic Surface Transportation Network" as an alternative to the more narrowly-defined concept of a "National Highway System." The mobility, economic competitiveness, environmental and energy challenges we face in the 1990's and 21st Century call for a more inclusive concept of what constitutes the nation's vital transportation system. The American Public Transit Association, joined by many other national organizations, has proposed such a strategic surface transportation network consisting of existing and needed urban and rural transit, Amtrak, intercity bus and high speed rail networks. CNTP endorses this concept and believe it would best address the country's future needs.

VIII. THREATS TO THE FREEZE ON LCV's

CNTP strongly endorses the "freeze" on the operation of longer combination vehicles (LCV's) enacted in ISTEA which is in the interests of public safety, the nation's infrastructure, environmental quality and a healthy freight railroad industry. We are concerned about pressures that negotiations on the North American Free Trade Agreement (NAFTA) may create to weaken this freeze. We strongly urge the Committee to oppose any such efforts and we thank the Members of this Committee who have voiced their concerns on this issue.

Thank you Mr. Chairman for holding these important hearings on ISTEA implementation and for the opportunity to present the views of our national coalition.

Unobligated Flexible Funds FY 1992

all amounts rounded to nearest dollar

State	Available CMAQ	Unobligated CMAQ	Unobligated STP	Unob Minum Allocation	Unob Donor State Bonus	Total Unobligated Funds
ALABAMA	4,047.699	4,047.699	16,657.543	2,120.523	876.128	23,701.893
ALASKA	4,047.699	3,772.699	20,845.668	0	0	24,618.367
ARIZONA	10,847.558	35,000	28,756.491	0	9,883.245	38,674.736
ARKANSAS	4,047.699	161.779	15,591.293	1,191.085	229.202	17,173.359
CALIFORNIA	119,881.028	25,725.340	100,739.518	0	21,751.650	148,216.508
COLORADO	4,047.699	0	27,570.359	0	0	27,570.359
CONN.	19,007.782	0	20,373.844	0	0	20,373.844
DELAWARE	4,047.699	854.659	15,265.169	0	0	16,119.828
DIST OF COL.	4,047.699	3,653.699	6,732.716	0	0	10,386.415
FLORIDA	24,154.575	24,154.575	39,813.623	100,130.558	5,520.365	169,619.121
GEORGIA	12,509.461	11,009.461	62,039.344	72,481.375	4,830.172	150,360.352
HAWAII	4,047.699	0	10,406.196	0	0	10,406.196
IDAHO	4,047.699	2,515.156	8,523.443	0	0	11,038.599
ILLINOIS	39,583.173	22,715.214	30,932.993	0	0	53,648.207
INDIANA	9,103.148	7,665.548	29,229.220	18,134.950	13,654.451	68,684.169
IOWA	4,047.699	4,047.699	23,521.079	0	0	27,568.778
KANSAS	4,047.699	4,047.699	55,829.075	0	0	59,876.774
KENTUCKY	5,940.422	4,648.530	17,531.526	7,226.531	2,029.413	31,436.000
LOUISIANA	4,047.699	4,038.899	31,512.471	0	11,859.868	47,411.238
MAINE	4,047.699	3,142.141	5,904.397	213.824	936.452	10,196.814
MARYLAND	25,451.096	14,218.795	13,668.666	0	0	27,887.461
MASS	33,269.510	5,675.110	7,864.193	0	0	13,539.303
MICHIGAN	23,565.248	23,350.491	34,867.581	757.721	11,719.312	70,695.105
MINNESOTA	4,047.699	4,007.699	42,676.812	0	0	46,724.511
MISSISSIPPI	4,047.699	4,047.699	18,724.012	79.714	5,400.606	28,252.031
MISSOURI	8,014.856	8,014.856	18,680.139	3,904.831	781.860	31,381.686
MONTANA	4,047.699	4,047.699	27,110.806	0	0	31,158.505
NEBRASKA	4,047.699	517.689	23,552.935	0	0	24,070.624
NEVADA	4,047.699	4,047.699	11,218.847	0	0	15,266.546
NEW HAMPSHIRE	4,047.699	4,047.699	17,460.779	0	0	21,508.478
NEW JERSEY	46,600.101	640.700	9,656.342	0	0	10,297.042
NEW MEXICO	4,047.699	2,675.942	7,712.949	0	0	10,388.891
NEW YORK	85,150.889	47,575.835	49,898.068	0	0	97,473.903
N. CAROLINA	9,983.211	7,739.939	62,916.017	0	7,086.318	77,742.274
N. DAKOTA	4,047.699	1,000.358	8,080.762	0	0	9,081.120
OHIO	35,493.239	21,860.909	52,726.965	30,660.335	9,425.962	114,674.171
OKLAHOMA	4,047.699	2,651.699	20,212.293	12,852.444	7,986.823	43,703.259
OREGON	4,337.451	3,691.395	13,837.383	1,020.963	2,104.180	20,653.921
PENN.	48,835.617	48,010.791	21,533.515	0	0	69,544.306
RHODE ISLAND	4,730.337	4,348.431	10,503.999	0	0	14,852.430
S. CAROLINA	4,047.699	4,047.699	45,606.463	0	0	49,654.162
S. DAKOTA	4,047.699	4,047.699	21,109.329	0	0	25,157.028
TENNESSEE	9,020.642	7,474.518	27,779.803	34,826.601	8,739.587	78,820.509
TEXAS	80,399.103	80,399.103	65,166.491	34,827.959	8,776.149	189,169.702
UTAH	4,047.699	3,914.699	23,287.139	0	0	27,201.838
VERMONT	4,047.699	1,957.715	5,453.853	0	0	7,411.568
VIRGINIA	17,200.510	2,816.414	25,581.450	0	0	28,397.864
WASHINGTON	12,945.564	11,678.858	22,964.445	0	0	34,643.303
W. VIRGINIA	4,047.699	3,001.299	7,210.369	0	0	10,211.668
WISCONSIN	10,179.652	7,861.252	29,781.306	703	6,700.174	44,343.435
WYOMING	4,047.699	38.879	11,409.930	0	0	11,448.809
PUERTO RICO	4,047.699	4,047.699	13,571.921	0	0	17,619.620
	809,539,745	469,693,064	1,339,581,533	320,430,117	140,291,916	2,269,996,630



The Star-Ledger, Friday, February 19, 1993

Transport council shifting in favor of highways

Panel differs with EPA over move giving transit less funding priority

By GUY T. BAEHR

Despite a warning from federal environmental officials, the North Jersey Transportation Coordinating Council is moving to revise its project ranking procedure to give a higher priority to highway expansion and less weight to mass transit work.

The 20-member planning council must approve all transportation projects in New Jersey's 13 central and northern counties before they receive federal funding amounting to hundreds of millions of dollars a year.

Joel Weiner, executive director of the council, said its technical advisory committee will meet today in Newark to go over a new proposed project ranking list based on revised procedures.

The list, which Weiner said would not be available until today, will help determine which of almost 200 county and state transportation projects in the 13-county region will gain federal funding during the coming fiscal year.

This is the first year that the council will use such a ranking procedure to help it decide how to distribute scarce federal highway and mass transit funds among competing projects put forward by NJ Transit, the state Transportation Department and member counties.

Under landmark transportation legislation passed by Congress in 1991, the 18-year-old Newark-based council has much greater power over how the funds will be distributed.

The high stakes involved caused the federal Environmental Protection Agency (EPA) to warn the council against revising its original project ranking criteria.

In a Feb. 10 letter, William Muszynski, acting regional administrator of the EPA overseeing New Jersey, said, "The revised project selection

criteria under consideration have the potential to shift funding away from mass transit projects to highway projects."

In the letter, which was sent to Passaic County Freeholder Richard DuHaime, chairman of the council, Muszynski said, "EPA supports the original criteria as a more appropriate approach to meeting the requirements of the Clean Air Act."

The council, which is dominated by county government representatives, rejected the advisory committee's first proposed project ranking list in January because it put nearly all eligible mass transit projects at the top of the list and most highway expansions, local bridge repairs and safety improvements in the bottom half of the rankings.

DuHaime, who was elected chairman of the council in January, said at the time that the ranking came as a "surprise" to most of the council's voting members.

Weiner said the original list was based on a project-by-project scoring system using six criteria agreed upon by the technical advisory committee after lengthy consultation with a wide range of interests, from environmentalists and state officials to county engineers and business and labor groups.

But after the council members saw the resulting priority list they told Weiner and the technical advisory committee, which is made up of professional planners from the 13 counties and other member agencies, to revise the criteria and scoring system to give a higher priority to new highways, highway widenings, bridge and safety projects.

DuHaime, who said he reflected the opinion of many of the county representatives on the council, said, "It doesn't seem like it's coming out right

when the first 25 or 30 projects are coming out transit projects and most of our bridge projects are down at the end."

"We have to take into account that the paramount concern now is jobs and the economy," he said. "If you have jobs but people can't get to them because of congestion, you're not meeting people's needs."

"Ninety-five percent of our people are using cars to get to work. We have to take that into account," he said.

In his letter, Muszynski said, "The EPA is aware of your concern that most commuters in New Jersey travel by private car to their workplace. However, with the implementation of the original project selection criteria, it is likely that mass transit commuter options will become more available as well as more desirable."

"Therefore, I strongly recommend that the NJTCC maintain its original ranking criteria in the selection of projects for funding and emphasize the advancement of mass transit projects."

Voting members of the council include freeholder representatives from Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren counties.

Other voting members include representatives from Newark and Jersey City, the state Transportation Department, NJ Transit, the Port Authority of New York and New Jersey, the Governor's office and a citizen's representative appointed by the Governor.

Weiner said the proposed ranking criteria and scoring system were revised during meetings held on Jan. 27 and Feb. 1 by the same diverse group of county planners and interest groups that developed the original criteria.

STATEMENT OF FEDERICO PEÑA
SECRETARY OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HEARING ON IMPLEMENTATION OF ISTEA
APRIL 27, 1993

Mr. Chairman and Members of the Committee, it is a pleasure to be here this morning. I am particularly pleased that the occasion for my first appearance before this Committee is to discuss implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). I say that because translating the vision of ISTEA into real, working programs is essential to the creation of a productive, environmentally sound, and safe transportation system nationwide.

This Committee should be proud of its work in fashioning a truly comprehensive law that provides the framework for new and broader opportunities to improve our Nation's transportation infrastructure. It has changed the ways we do business -- and I believe these changes are for the better. Without question, the lives of every man, woman, and child in the United States are affected daily in some way by our ability to move people and goods. The promise of ISTEA for all people envisioned increased mobility, reduced congestion and the creation of new jobs, while rebuilding our infrastructure and addressing environmental issues.

The President has called for a commitment to excellence--to reinvent government. For my part, those ideals will be reflected in my stewardship of ISTEA. I am fully committed to the goals of ISTEA: that we as a Nation be served by an efficient, fully integrated and intermodal transportation system that provides mobility to our people and access to markets for our industry while at the same time being mindful of our environmental obligations. My job is to make sure that the vision of ISTEA works in practice. My priorities are ensuring the safety of the transportation system, promoting close cooperation with our partners in State and local government, meeting regulatory and statutory deadlines, and making full use of the flexibility of the new programs.

The strong partnership we have with States, local officials and advocacy groups is fundamental to the continued success of our implementation efforts. ISTEA is a complex law and presents many challenges, particularly in its

planning and management requirements. As a former mayor, I understand the concerns of local officials and know how important cooperation among all levels of government is. With the combined efforts of our partners, we will be able to realize the full potential of ISTEA.

It is now sixteen months since ISTEA was enacted. I believe the Department has been very successful in getting these new programs up and running. My colleagues from DOT's modal administrations who have and will be testifying during these hearings will provide you with the details of DOT's implementation activities. In fact, Bob McManus, Acting Administrator of the Federal Transit Administration (FTA), is here today to speak about our transit program. I would like to use my time to present an overall picture of the Department's efforts and highlight a few areas of our work.

A good place to start is with the President's investment proposals. While we are of course disappointed that the short term economic stimulus package for this fiscal year did not pass the Senate, we are nevertheless pleased that the President's central budget package did pass. We in the Administration will work closely with the Congress to ensure that the President's investment initiatives are approved in the appropriations process this year. There is no stronger evidence of our commitment to the goals of ISTEA than the President's recently proposed budget for FY 1994. Without adequate funding support, the blueprint of ISTEA will fall short of its full potential. The Department's 1994 budget request for \$40.2 billion is 10.2 percent above last year's enacted level. Overall, 71 percent of the Department's spending will be targeted to infrastructure investment. This will lead to improvements in transportation safety, efficiency, reliability and cost-effectiveness.

The overall highway and transit budget increase over baseline levels for FY 1994 through 1997 is \$12 billion. This could mean as many as a quarter million jobs. For FY 1994, the budget proposes to fully fund the highway program authorized by ISTEA at a level of \$20.5 billion. This increased investment will result in the improved performance of the highway system, less congestion and increased highway safety. To sustain this level of funding, we propose to extend the two and half cents motor fuels tax, now dedicated to deficit reduction, and dedicate revenue equivalent to two cents of the tax to the Highway Account of the Highway Trust Fund beginning October 1, 1995. We project the Byrd Amendment would trigger a reduction in apportionments as early as FY 1995. Consistent with recent practice, an amount equivalent to one-

half cent of the deficit reduction tax would be transferred to the Mass Transit Account of the Highway Trust Fund.

This year's budget reflects the Clinton Administration's commitment to the Federal transit program --the funding is there to prove it. The \$4.6 billion request for the transit program represents a more than 50 percent increase over the previous Administration's proposed 1993 budget and 20 percent increase over the enacted level. Our emphasis is on meeting transit capital needs. The quality of the nation's transit system is critical because transit facilities will be called upon to carry even more passengers as States and localities develop strategies to deal with congestion, air quality and energy conservation concerns. A viable transit system, both rural and urban, also serves the needs of people with low incomes, the elderly and persons with disabilities, and Americans living in rural areas who have limited transportation choices. This year's budget request recognizes the important role of improved passenger transportation to our economy as a whole.

One of the Department's primary obligations is to promote transportation safety. Investing in the nation's highway and transit systems also improves the safety of these systems. A particular focus has been on the highway safety programs administered by the National Highway Traffic Safety Administration (NHTSA), whose appropriations we propose to increase by 14 percent. These funds will help the States improve their response to the continuing threat of drunk drivers and will encourage them to enact and enforce laws requiring the use of safety belts and motorcycle helmets.

These programs are contributing to a steady decline in the nation's highway fatality rate. By 1992, the rate had fallen to 1.8 deaths per hundred million vehicle miles traveled, an all time low. Despite this progress, 39,200 persons died in highway crashes last year, a number whose size reminds us of how much further we must go to improve highway safety. Vehicle crashes remain the number one cause of death for persons aged 5-32 and the biggest cause of serious injuries.

Beyond the terrible human cost of highway crashes, we are now beginning to understand how much these crashes add to the cost of our out-of-control health care expenses -- a subject very much on our minds these days. In 1990, the last year for which we have complete data, injuries and fatalities from highway crashes cost society more than \$13.9 billion in direct medical costs. The cost in terms of lost productivity was even greater: \$50.6 billion. When property

damage and other direct expenses are added, the total cost in 1990 amounted to \$137.5 billion. In short, effective highway safety programs are good economics as well as good medicine.

We have also realized significant safety benefits through the commercial drivers license program, stricter drug and alcohol enforcement and an enhanced Motor Carrier Safety Assistance Program (MCSAP). Under MCSAP, States have increased their roadside truck and driver inspections from 1.3 million in FY 1989 to 1.6 million in FY 1992. This program is one of our best tools for getting unsafe trucks off the road.

While it is important to increase funding for infrastructure investment, it is equally important that we make every dollar of that investment count. We can do this by using the tools ISTEA gave us. The emphasis that ISTEA places on intermodalism, flexibility, planning, investment criteria, and management will help States and localities make wise use of their resources.

Intermodal planning is especially critical for the successful implementation of ISTEA. The Department is working to achieve ISTEA's vision of an intermodal transportation system that provides efficient, seamless connections for the movement of people and freight by rail, water, highways and air. Government must facilitate and encourage the development of such a system and take account of the views and needs of the system's customers. We in government can make significant contributions in technology, in infrastructure planning and investment, in intergovernmental coordination, and in public-private communications through the efforts of the modal administrations and the clearinghouse activities of DOT's Office of Intermodalism.

ISTEA directs that intermodal connections be given priority consideration. Prior to ISTEA, conventional transportation planning typically looked at modal improvements in isolation and was not keeping pace with developments in the public and private sector. Transportation needs were beginning to exceed the service levels that single modes could provide, and the demands of modal interchange and flexibility required more consideration. Congress and the Department recognized that, to obtain the optimum yield from our transportation system, the planning process needed to be refocused to address the intermodal transportation demands of the future, rather than the sometimes unimodal priorities of the past.

I assure you the Department's modal Administrations have been working closely together to develop the guidance and rules for ISTEA. This will continue

as our new team assembles at DOT. As you know, the President has announced his intention to nominate Michael Huerta, executive director of the Port of San Francisco, to be the new Associate Deputy Secretary of Transportation and head the Office of Intermodalism. His background is in international trade and he will be a valuable addition to my staff. I am also pleased that the President has said he will nominate a person with an extensive background in transportation at both the federal and local levels, Mortimer Downey as Deputy Secretary. In addition, the President has said he will nominate Rodney Slater, who is currently Chairman of the Arkansas State Highway Commission, as the new Federal Highway Administrator, Jolene Molitoris as the Federal Railroad Administrator and Admiral Al Herberger as Maritime Administrator.

ISTEA shifted investment decision making toward the local level where federal transportation dollars will be spent. The Metropolitan Planning Organizations (MPOs) and other local entities have considerably more say now in the planning process and about the investments in transportation infrastructure than they once had.

Shortly after I became Secretary of Transportation I learned that the rules and regulations setting forth the guidelines for State and local officials to comply with the ISTEA planning provisions had not been issued. I made this one of my highest priorities. We have now published draft rules under Notices of Proposed Rulemaking (NPRM) for these planning regulations. Among other things, these rules will establish guidelines for States and local governments to ensure proper emphasis on intermodal transportation movements including consideration of access to ports, airports and rail intermodal terminals. The deadline for comments to the NPRMs is May 3. We welcome all comments from the States, localities, and private entities and citizens.

Along with encouraging the preservation of existing transportation infrastructure and making economical investments for the future, ISTEA also established certain key programs. The National Highway System (NHS) is a vitally important component of ISTEA. It will form the backbone of our interstate and interregional road network. The system, which will be proposed by DOT in consultation with State and local officials, must be submitted to Congress by the end of this year. Congress then must approve the final designation by September 30, 1995 in order for NHS funds to continue to be apportioned to the States. I recognize this Committee's interest in keeping development of the system on schedule. I am advised that the States are working

very diligently in providing FHWA with their proposed designations that are due by the end of this month. I look forward to working with this Committee and others in Congress as the NHS develops.

In addition to establishing the NHS, ISTEA consolidated a number of categorical highway programs into a new block-grant type program, the Surface Transportation Program (STP), giving the States greater flexibility in the use of highway funds. Funded at \$23.9 billion over the six-year ISTEA authorization, the STP gives States and local governments authority to fund projects on any roads, including the NHS, that are not classified as local or rural minor collectors. Moreover, STP funds may also be used for transit capital projects. This gives State and local officials an opportunity to fund a variety of highway and transit capital projects that will best meet their mobility needs. So far, States have taken significant advantage of this flexibility. Approximately \$53 million in STP funds have been used for transit projects and another \$277 million have been used for transit from the Congestion Mitigation and Air Quality Improvement Program (CMAQ).

In addition to the flexibility provided under STP, ISTEA provides funding flexibility among other highway programs. To date, States have transferred a total of almost \$1.3 billion of their apportionments among the highway categories.

States must obligate 10 percent of their STP funds for safety construction activities, e.g. hazard elimination and rail-highway crossings, and 10 percent for transportation enhancements, which encompass a broad range of environmentally-related activities such as acquisition of scenic and historic sites, landscaping, mitigation of water quality impacts caused by roadway runoff and rehabilitation of historic transportation facilities. I am advised that the States have been successful in using these funds for the projects and activities intended.

By comparison, States have been a bit slower in using their funds under the CMAQ. CMAQ directs funds to transportation programs and projects which will contribute to attainment of national air quality standards. To date the majority of CMAQ funds have been obligated for projects other than traditional highway projects, including carpools and bicycle and pedestrian facilities. States have obligated about 42 percent of their CMAQ funds during the first year of ISTEA. Although progress has been made under this new program, States and MPOs must set up their own administrative processes for implementing projects and activities that will ensure their compliance with provisions of the Clean Air

Act Amendments of 1990 (CAAA). Some of the delays encountered for programs such as vehicle inspection and maintenance programs are the result of insufficient State enabling legislation. We hope that the States will enact such legislation to allow the use of these program funds to meet the deadlines for compliance with CAAA provisions and avoid the mandatory sanctions under the CAAA.

As reflected in the programs I just mentioned, ISTEA complements the CAAA by providing funding and giving State and local transportation officials the flexibility to use it in ways that will help us develop a balanced, environmentally sound, intermodal transportation system. I am committed to that effort and am working closely with Carol Browner, the Administrator of the Environmental Protection Agency (EPA), to help States to adjust their programs to the new requirements. The CAAA strengthened earlier requirements to assure that transportation plans, programs, and projects "conform" to air quality plans. Also, statewide highway funding sanctions could be imposed by EPA if States fail to submit State implementation plans under CAAA requirements. Such sanctions could delay important transportation improvements and have serious implications for both mobility and the economy. We are hopeful that this can be avoided and will work closely with the States to help them comply with the new requirements.

I would also like to highlight another aspect of ISTEA that we in the new Administration support. As part of the President's major technology initiative, the Administration has proposed to increase funding support for ISTEA's Intelligent Vehicle Highway Systems (IVHS). The FY 1994 budget calls for \$225 million for IVHS next fiscal year, a 45 percent increase over the FY 1993 level. Over the next four years, in FHWA's budget alone, we plan to invest \$925 million. The IVHS program holds the promise of enhanced highway safety in the future and of improvements to on-the-road efficiency through the accelerated use of advanced technology. The Department has begun to aggressively implement the IVHS program over the past year. A solid foundation has been established through work with IVHS AMERICA, our federal advisory committee, to develop strategic plans for a national program. Within the year after ISTEA was enacted, the Department sent the *DOT IVHS Strategic Plan* to Congress. The Department is currently developing the open system architecture for an integrated, nationwide IVHS deployment. This involves a far reaching, consensus building effort.

A full range of priority IVHS research and development activities are now under way with highway, transit and safety projects sponsored by DOT. For example, the Department has initiated an ambitious automated highway systems (AHS) prototype program. By eliminating human error, automated highways could provide a nearly accident-free driving environment. Automated vehicle control could increase by two or three times the capacity of present day facilities. Thus, the AHS presents an exciting opportunity to gain dramatic congestion and safety benefits from IVHS technology. The goal of ISTEA is to have the first fully automated roadway or test track in operation by the end of 1997.

IVHS also has many opportunities for intermodal transportation associated with the current defense conversion initiatives. We believe we can derive multiple pay-offs from existing federal investments in technology to form partnerships with the defense and space industries, and the national labs, speeding up the transfer of their technologies to IVHS applications. These technologies, which include Global Positioning System (GPS) satellites, can make a major contribution to smoother movement of freight. GPS can track the movement of intermodal containers aboard ships, trucks and rail instantly with a position accuracy of three to five meters. We see it as a significant opportunity to carry out the President's defense conversion initiative by applying military technology to expanded civilian use and demonstrating U.S. leadership in this area.

Finally, I want to provide you with a brief status report of the Bureau of Transportation Statistics (BTS). ISTEA required the establishment of this Bureau as a separate, authoritative entity within DOT reporting directly to the Secretary. BTS was officially established last December and is currently headed by the Deputy Director. This office is to compile, analyze and publish transportation statistics as well as develop a long-term data collection program. They will also develop guidelines to improve the credibility of transportation statistics as well as making DOT's statistics accessible and understandable. BTS has produced a *Transportation Data Sampler CD-ROM*, begun a nationwide collection of multimodal commodity flow data with the Bureau of the Census, initiated planning for a similar survey of passenger flows, and launched a program to make data from the 1990 Census more easily usable by States and MPOs. This may at first blush seem a very dry, academic effort, but it is in fact critical to future policy decision making. Absent the fundamental knowledge of how our

transportation system is actually working, it will be difficult or impossible to make informed decisions about our future.

Conclusion

We are now into the second year of ISTEA. As Secretary, I look forward to the enormous challenge of making its vision a reality. With help from our partners in the States and local communities, we will achieve the goals of ISTEA. The Administration's and my personal commitment to infrastructure investment, environmentally sound policies, technology and intermodalism will pay off in long term dividends for the Nation's transportation system and for American jobs--good paying jobs, permanent jobs--and will give new strength and renewed vigor to America's domestic and international commerce.

Mr. Chairman, that completes my prepared remarks. I will be happy to answer any questions you or the Members of the Committee have.

STATEMENT OF VERNON RICHARDS, MAYOR

CITY OF SMITHVILLE, TEXAS

ON BEHALF OF THE

COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA
April 27, 1993

Congressman Rahall and members of this committee. My name is Vernon Richards, Mayor of Smithville, Texas for the past five years. I am a retired Division Manager for Southwestern Bell Telephone Company. Smithville, Texas is a "quality of life" community of approximately 4000, located 45 miles east of our Capital City of Austin.

It is my sincere privilege and pleasure to appear before this committee today to discuss the issues and benefits of a transit system for a small rural community like Smithville. I am not aware of National concerns such as funding and operational issues facing surface transportation for our country. However, I can testify of the importance of the presence of community transportation for a small community.

How does community Transit Service affect Smithville, Texas?

1. Economic Impact - When the transit service was introduced to Smithville an old abandoned car dealership was purchased and restored. The amount of the project totaled \$300,000.00. In a small town this is a major impact on the economic welfare of a community. This center serves three counties with 18 employees. Plans are now underway to add bus maintenance to the facility. Several more new employees will be involved and any number of new employees impacts a community of our size.

The Kerrville Bus Company is the only bus service available to Smithville making two stops daily. Prior to the transit Center the bus stopped at a service station with no seating space nor adequate restroom facilities. Now passengers are provided these needs in our new center. Smithville is the "rural connection" for the small communities in the county. Local transit buses pick up and deliver passengers to Smithville. They connect with the bus line to Austin or Houston and then to other areas of the country. Adequate transit service provides incentive for new businesses to locate in rural communities.

2. Work Transportation - Bus service is provided to the 80 residents in Smithville who work in Austin. Some citizens must have this service in order to have a job.

3. Service for the Elderly-Needy-Disabled-Children - There are citizens who would have no way to travel without transit service. Elderly use the service to visit doctors, hospitals, grocery stores and some social activities. Some require special medical

STATEMENT OF VERNON RICHARDS, MAYOR
Page Two

attention from Austin (45 miles from Smithville). Some participate in the Smithville Nutrition Program and their transportation needs to the centers are provided by the transit service.

Service is also utilized by children after school to attend special programs while working mothers are not home. Many of our citizens would have no way to communicate outside of their homes without this service and therefore their social and physical needs would not be met.

4. Special Events - Smithville's annual Jamboree celebration is held at the City's River Park located several miles from town. Transit buses are used to transport citizens from the local high school parking lot to the park. Buses run every 30 minutes for the event. Many citizens would not have the opportunity to enjoy the celebration without this service.

Conclusion - Community Transit Service provides a network of services that are crucial to the welfare of Small Town America. Even though the service is adequate it should be expanded to provide additional services. The government should live within our means but there are some vital services like community transit that should be carefully studied for expansion. Thank you for allowing me this opportunity to appear before you today and voice my appreciation and concerns. If you have any questions I will be happy to respond.

Vernon Richards, Mayor - City of Smithville, Texas

STATEMENT OF ARNA V. SHAFER, TRI-STATE TRANSIT AUTHORITY
ON BEHALF OF
COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA
SURFACE TRANSPORTATION SUBCOMMITTEE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

April 27, 1993

Mr. Chairman, Members of the Committee, my name is Vickie Shaffer. I have been the General Manager of the Tri-State Transit Authority since 1980. Our transit system serves the greater Huntington, West Virginia urbanized area. We operate a fleet of 29 vehicles, employ 51 persons and serve an area with a population of approximately 86,000 people. We provide 725,000 trips a year, largely on fixed-route service. Like other small urban and rural operators, our ridership is largely accounted for by women, senior citizens, folks with low-incomes and others who are almost entirely dependent on our bus service for their transportation.

I am appearing as a representative of the Community Transportation Association of America (CTAA), a national organization of rural, small urban and specialized transportation providers for which I serve as West Virginia's State Delegate. Our association advocates on behalf of the particular needs and problems of the nation's small and medium-sized transportation providers. That is the perspective from which I testify.

Like others here today, I heartily endorse the principles set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). As a small operator from West Virginia, I am particularly aware of the yeoman service performed for our part of the industry by Congressman Rahall, now Chairman of this Subcommittee, in connection with that legislation. But, also like others, I would like to suggest that the committee look at some areas of continuing concern.

Operating Assistance for Small Urban Areas - Federal Transit Administration data make it clear that rural and small urban transit is the most dependent on Federal funds for its operations. The Sec. 18 and Sec. 9(a)(1) network relies on FTA funds for 25 percent of its operating budget. For urbanized areas of 200,000 to a million in population, the figure is half that, and for systems serving areas of a million or more, FTA funds make up only 4 percent of the total. This means, among other things, that an "across-the-board" reduction in formula funding -- such as occurred in last year's appropriations -- does not really affect everyone equally. It is significantly more painful for the rural and small urban operators.

This greater dependence on federal funds also suggests the need to either fully fund the authorized operating assistance

allowance for small urban areas or to eliminate the "cap" for those recipients. At the present time, the combination of holding operating assistance at a fixed level and also holding down the formula assistance available to small urban areas means that in half of the states, part of the operating assistance allowance actually goes unfunded. This committee is not in a position to assure "full funding" of the small urban operating assistance allowance but you could amend Sec. 9(k)(2)(A) so as to exclude those areas from its coverage. We urge you to give such an action your serious consideration.

Need for Funds to Meet National Mandate Costs - Congress continues to legislate costly mandates applicable to transit without providing any additional funding to facilitate their implementation. The most obvious examples are the Americans with Disabilities Act (ADA), the Clean Air Act (CAA) and the Omnibus Transportation Employee Testing Act (requiring drug- and alcohol-testing). We would strongly urge that a temporary compliance assistance fund be established (for something like a three-to-five year period) to mitigate the adverse effects that transit riders and service will otherwise suffer as a result of the requirement that transit agencies meet all these costly new conditions. Under such an arrangement, the government would at least be sharing the costs of compliance with transit's ridership, instead of loading all of the costs on them.

Increasing Access to Flexible Funding for Rural and Small Urban Areas - In a major break with the past, ISTEA authorized state and local decision-makers to transfer selected highway funds to transit projects and many in the transit community have high hopes for the potential of this flexibility. Data from the Federal Highway Administration last month showed a cumulative total of \$436 million in such transfers. CTAA's review of the listings found that less than 3 percent of those transferred funds went to rural or small urban projects. We suspect that one of the reasons for that disadvantaged status is the relative lack of ongoing transit planning resources in those areas. Without those resources, transit needs don't get adequately identified and/or quantified and the competition for scarce funding resources remains an unequal one.

As one possible method of assuring adequate consideration of transit needs and potential in the preparation of Transportation Improvement Programs (TIPs) and Statewide Transportation Improvement Programs (STIPs) we urge the committee to consider requiring that at least 20 percent of the resources devoted to the preparation of a TIP or STIP be devoted to assessment of transit needs and analysis of possible projects to respond to them.

Need to Assure Timely Use of Scarce Transit Funds - While recognizing that discretionary capital funds are intended to meet

major investment costs, CTAA feels that over-all budget constraints require assurance that projects approved for funding will proceed in a timely manner and that scarce funds badly needed elsewhere do not sit idle. For this reason, we suggest consideration of a "use it or lose it" feature for this program similar to that which applies to formula assistance. Under such a feature, projects unable to use Sec. 3 funds within a reasonable period would see the unused funds returned to FTA for reallocation to other projects (in any of the section's three general categories) with a more immediate need for those resources. Such a feature need not prejudice subsequent funding of the activities originally approved.

Together with other recommendations addressed in the statements of my colleagues, Dave Marsh and Eric Menzer, I believe that actions by this committee along the lines indicated could result in improved implementation of ISTEA and a fuller realization of its great potential. Thanks again for this opportunity to express our views and for your continuing efforts on behalf of the nation's transit dependent people.

TESTIMONY OF
THE AMERICAN PUBLIC TRANSIT ASSOCIATION
BEFORE THE
SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
OF THE U. S. HOUSE OF REPRESENTATIVES

April 27, 1993

American Public Transit Association
1201 New York Avenue, N. W.
Washington, DC 20005
(202) 898-4000

APTA represents over 1100 members, including all major commuter rail operations, motor bus and rapid transit systems, and organizations responsible for planning, designing, construction, financing and operating transit systems. APTA members include business organizations which supply products and services to the transit industry, academic institutions, and public interest groups.

APTA Witness List
Public Works and Transportation Committee
Surface Transportation Subcommittee
April 27, 1993

Peter E. Stangl
Chairman of the Board of Directors
and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Michael S. Townes
Executive Director
Peninsula Transportation District Commission
3400 Victoria Boulevard
Hampton, VA 23661

Marlene B. Connor
Administrator
Pioneer Valley Transit Authority
2808 Main Street
Springfield, MA 01107

Tom Walsh
General Manager
Tri-County Metropolitan Transportation
District of Oregon (Tri-Met)
4012 Southeast 17th Avenue
Portland, OR 97202-3993

Transit NOW Coalition Witness

James W. Clarke
Conservation Chairman
Sierra Club, Montgomery County Chapter
1916 Dundee Road
Rockville, MD 20850

INTRODUCTION

The American Public Transit Association (APTA) appreciates the opportunity to testify today before the Surface Transportation Subcommittee of the House Public Works and Transportation Committee. Mr. Chairman, and members of the Subcommittee, our testimony reviews the objectives of the Intermodal Surface Transportation Efficiency Act (ISTEA), discusses its implementation thus far, and recommends legislative changes to address problems experienced by transit authorities.

While much of our oral testimony focuses on experience with flexible funding and the decisionmaking process at the local level, it is important to review the original goals and objectives of the act in order to draw conclusions about its actual application.

The ISTEA represents a major federal commitment to the nation's surface transportation needs. One of its cornerstones is increased transit investment and use. It reversed a decade of steadily declining federal support for transit by authorizing substantially increased transit funding levels. It was designed to eliminate modal biases at all levels of government. The law grants states and localities the flexibility to use a substantial amount of federal surface transportation funds for either transit or highways. It provided a mechanism to increase federal operating assistance each year for all transit operators to help meet rising operating costs, resulting in large part, from new federal requirements and important national principles. Under most categorical programs, it equalizes the matching share required at the local level and it mandates coordinated transportation planning by state and local authorities.

ISTEA IMPLEMENTATION

While the transit industry believes there is nothing fundamentally wrong with the concept of ISTEA, and in fact strongly supports the principles embodied in the new law, there have been problems associated with its implementation.

Flexible Funding

There has not been as much flexible funding transferred to transit projects as was envisioned by some, but we are beginning to see some encouraging trends and we believe the policy of flexibility should continue and be strengthened. State and local transportation officials operated under a set of rules that have remained unchanged for nearly 40 years. Adapting to such a dramatically new set of rules inevitably takes time. Implementing the ISTEA involves the development and promulgation of new regulations governing transportation planning and eligible activities, and it requires a new level of coordination between state and local authorities. In many instances it has been difficult to simply disseminate information on the new law and to overcome the institutional modal biases that have existed for years at the state and local level.

Flexibility under the new law has been focused on too few areas and too few programs. Of the \$244 million in flexible funds obligated to transit projects in FY 1992, fully \$100 million of the flexed funds were under the Interstate Substitution program, which predates ISTEA. Transfers under the Congestion Mitigation and Air Quality (CMAQ) program accounted for the greatest amount of flexible funding obligated in FY 1992 and FY 1993 (\$121 million and \$85 million respectively). Surface Transportation Program (STP) funds accounted for only \$21 million in obligations in FY 1992 and some \$25 million in FY 1993 thus far. This is far short of expectations of the law's authors and transit industry supporters.

Transit Participation in MPOs

To ensure adequate consideration of all transportation alternatives in the planning process, transit agencies should be represented on all Metropolitan Planning Organizations (MPOs), regardless of whether MPOs are reorganized. The law gave MPOs far greater control over both the transportation planning process and critical funding decisions. It should be amended to require transit representation on these decisionmaking bodies.

Differences in the Modal Programs

While the law does eliminate many modal biases between transit and highway programs, it does not address others. Obligation ceilings for highway programs continue to be set at levels closer to authorized program levels than are transit programs. The fact that the highway program is funded almost exclusively from the Highway Trust Fund and transit is authorized with a roughly equal mix of trust funds and general funds generally puts transit funding at a disadvantage in the federal appropriations process. In the current year, trust fund authorized transit programs were funded at more than 99% of the authorized level. Conversely, appropriations for general fund supported transit programs were set at less than 37% of the authorized spending levels. With the exception of authorization years, this funding trend has been in evidence for over a decade. As long as this difference between transit and highway funding sources remains, transit will be disadvantaged in the annual appropriations process.

The grant approval process for transit projects versus the reimbursement process for highway projects is another factor which differentiates transit and highways. The differences in these processes put transit at a disadvantage when trying to obligate funds as quickly as they would for a highway project. Another problem in this process is that states have either been slow in providing estimates of funding or the funding itself which is available to localities under the flexible funding programs. The environmental review and project approval process for transit investments also remains more onerous than the comparable process for highway construction. This is somewhat ironic since high-capacity transit projects have a greater potential to benefit the environment than highways that primarily accommodate Single Occupancy Vehicle (SOV) traffic.

Project Selection and Effect of State Obligation Ceilings

Another problem is the project selection process at the state level under Title 23. Even if metropolitan areas successfully get their projects programmed in State Transportation Improvement Plans (STIPs), funding is not assured. Most states use a first come first served basis for obligating projects in TIPs. Since actual funding under obligations ceilings is generally less than a state's total authorization to spend on individual programs (such as STP, CMAQ, NHS, etc.) once a state's annual obligation ceiling is reached, even projects that are in a local TIP may not be funded that year.

What has happened, is that states have ended up obligating funds to the fully authorized level under one program at the expense of another surface transportation program. According to the FTA, "nearly 35% of all available Surface Transportation Program (STP) funding and over 58% of available Congestion Mitigation and Air Quality Improvement (CMAQ) program funds were left unobligated in FY 1992 because states met their obligation limitation from other programs (i.e. NHS, Bridge, etc.) before these flexible funds could be expended."

Federal Funding Biases

Full funding of the federal transit program authorized in ISTEA is critical to effective implementation of the law, including \$5.1 billion for the Federal Transit Administration (FTA) each year in Fiscal Years 1994, 1995 and 1996, and \$7.3 billion in FY 1997.

Funding for transit, and surface transportation programs generally, should adhere to the priorities established in the ISTEA. Unfortunately, this has NOT been the case. Appropriation levels in the past two years have fallen far short of the levels authorized in ISTEA. Transit programs authorized under ISTEA are funded at \$3.6 billion in FY 1993, the same as in FY 1992, while the ISTEA calls for an FY 1993 spending level of \$5.2 billion.

While transit programs were funded at 70% of the authorized level in FY 1993, the highway obligation ceiling was set at approximately 90% of the authorized program level. Under the Clinton Administration's budget request for FY 1994, transit would be funded at 86% of the authorized level while highway obligations would be set in excess of the authorization levels established in ISTEA. While this is the most encouraging budget proposal in more than a decade, we want to urge that the additional and necessary step toward full funding be taken.

The President's economic stimulus proposal is another example of how transit and highways are not treated equitably. Under the original proposal, transit was to receive an additional \$750 million in FY 1993 supplemental funds, some \$800 million short of what was authorized in ISTEA. On the other hand, the President proposed supplemental funding for the highway program that was equal to the fully authorized level. The recent compromise offered by the President further exacerbated this inequity by proposing to reduce transit funding by 44% with no cut in supplemental highway funding.

To provide some context to these funding priorities, we would add that about \$2 in highway funding was provided for every \$1 in transit funding in FY 1981, and that approximately \$5 in highway funding for every \$1 in transit funding was provided in FY 1993. In FY 1993, the ISTEA authorized less than \$4 in highway funding for every \$1 in transit spending.

Equity within the Transit Program

While FY 1993 funding for surface transportation programs as a whole failed to adhere to the priorities established in ISTEA, funding priorities within the federal transit program were also ignored. Reductions in the formula programs, in conjunction with increases in the discretionary program, created significant shortfalls for transit operators who depend on formula funding. This created a particularly difficult situation for transit operators from smaller cities and rural areas who generally have less access to the discretionary program. Actual funding for the formula program in FY 1993 was set at 60% of the authorized level, while discretionary funding was set at 85% of the authorized level.

Whatever the total transit funding level provided in a given year, APTA advocates that each FTA program be funded in proportion with its authorized share of the fully authorized program. Funding priorities established under ISTEA at fully authorized levels are viewed by the transit industry as fair and equitable.

REGULATIONS

Another factor inhibiting the expeditious implementation of the ISTEA has been the delay in the regulatory process for implementing the provisions in ISTEA and the Clean Air Act Amendments of 1990. Clean Air Act Amendments of 1990 were intended to drive the transportation planning process. Only transportation plans and programs that conform to the air quality State Implementation Plan could be approved for implementation. This is central to ISTEA and Clean Air Act legislation. However, delay in regulatory guidance has hindered effective transportation decision making.

Many joint Federal Transportation Administration (FTA) and Federal Highway Administration (FHWA) regulations are needed to fully utilize ISTEA. However, many regulations are still in the developmental stage. Early guidance issued by DOT, either by the FTA or the FHWA, has not been issued uniformly across the various regions. Early guidance was not issued in the Federal Register, the publication with widespread distribution and available for public review. All guidance and relevant regulatory information on ISTEA should be published in the Federal Register to ensure uniform dissemination.

In addition, the CAA amendments required EPA, with DOT concurrence to promulgate conformity criteria and procedures by November 11, 1991. The CAA also states that these procedures shall require States and MPOs to include their November 1992 submissions of transportation-related State Implementation Program revisions, conformity criteria and

procedures based on the EPA final rule. The EPA failed to meet this statutory deadline and the delay has caused problems in conforming transportation plans and programs with the State Implementation Plan. Only threats of lawsuit have compelled the EPA to issue a proposed rulemaking which allows for further delays by extending SIP revisions by one year. The EPA expects to issue a final rule by October 1993.

Joint Planning Regulations

On March 2, 1993 the FTA and FHWA published joint Notices of Proposed Rulemaking (NPRMs) on three major provisions of the ISTEA. Comments on these NPRMs are due by May 3, 1993. By the time these important proposed rules are finalized, ISTEA will have been enacted over two years.

The NPRMs address provisions governing metropolitan and state transportation planning, and management systems for public transit facilities, intermodal facilities, and congestion. For the most part, the NPRMs do not provide sufficient steps and detail to implement the provisions of ISTEA. In addition, several proposals contained in the rulemakings would delay compliance with important ISTEA provisions.

The proposed rulemakings should address key state and local responsibilities for cooperative transportation planning and programming of funds established under ISTEA. These responsibilities would have to be identified in an agreement between the state and the MPO. These agreements would also specify responsibilities of the MPO and local transit operators and would provide a basis for a Unified Planning Work Program.

The NPRM provides for the federal oversight of the metropolitan transportation planning process via Federal certification of the planning process. The proposed rule must be strengthened in order to effectively implement ISTEA. Although states and metropolitan areas are diverse in their needs, and this diversity must be recognized at the Federal level, the proposed planning rules must establish basic requirements which will ensure consistency in the planning process. Federal requirements for certification of the planning process should be based on all of the ISTEA provisions of the metropolitan planning rules and regulations. APTA does not support the proposed language allowing for interim and partial certifications that could delay implementing the planning process over the length of the reauthorization.

In addition, the ISTEA states that in large metropolitan areas that are in nonattainment of clean air standards Federal funds may not be programmed for a highway or transit project that significantly increases capacity for single-occupant vehicles unless the project results from an approved CMS. These must be approved by October 1, 1993 and be part of a fully operational Congestion Management Systems (CMS) by 1995. However, the proposed rule allows for Single Occupancy Vehicle (SOV) projects to advance if they are part of an interim CMS, one which is not yet approved. APTA comments on the regulations will oppose advancing SOV facilities unless they come from an approved CMS.

Experiences at the Local Level

The APTA witness team includes representatives from four transit systems of varying size and geographically diverse areas of the country. They have had a variety of experiences with the ISTEA flexible provisions -- some have met with more or less success, others with failure. We believe that by constantly reviewing local experience in implementing the ISTEA the subcommittee can gain a fuller understanding of the problems and areas in need of strengthening. We would be pleased to work with the committee in the future in these reviews which we believe are very worthwhile.

RECOMMENDATIONS ON LEGISLATIVE CHANGES

Inclusion of Transit Operators on MPOs

In an effort to assure consideration of all transportation alternatives in the development of local TIPs we would advocate a legislative requirement that transit operators be included, with full voting rights, on MPOs.

Unitary Authorization

In order to achieve funding priorities within the transit program we recommend that the authorizing legislation be structured in such a way that the Appropriations Committee would provide a single appropriation for the entire transit program and that the allocation of funds for individual programs within the transit program would be allocated on a percent basis. While we recognize that these percentages could be ignored in the appropriations process, we would also note that the Appropriations Committee adhered to a similar process under the Section 9(b) blending authority.

Increase Gas Tax Support of Transit Program

APTA strongly urges Congress to provide a stable source of funding for the federal transit program. When ISTEA was being formulated, APTA proposed a 7 cent increase in the federal gasoline excise tax to be used to fund the federal transit program. APTA also supported the "Nickel for America" proposal which would have raised the gas tax 5 cents to be used for transportation purposes.

Providing transit with a larger source of dedicated funding would help it to compete for surface transportation funding in the annual appropriations process on the basis of federal transportation policy and not on the basis of federal budgetary considerations. We have argued for the retention of general fund support because we do not want see dedicated funding increases offset by reductions in the general fund program as happened in 1983, but we want to work with the authorizing and tax committees to provide a more stable and reliable means of fully funding authorized transit programs. While we recognize that this

committee does not have the authority to increase the federal gasoline excise tax, we appreciate its past support for increased dedicated revenues and we expect to continue to work with the committee on this issue.

Increase Authorization to Spend from Trust Fund

While this committee does not have authority to increase gas taxes and gas tax revenues, it could increase authority to spend from the Mass Transit Account (MTA) of the Highway Trust Fund. In an effort to level the playing field in the appropriations process, APTA recommends that the committee increase authority to spend existing trust fund balances within the existing total authorization limits.

Our analysis of the current balance and projected revenues in the MTA indicates that authority to spend from the trust fund (for formula programs) could be increased by some \$950 million per year for the remainder of the current authorization period. These estimates assume that revenues from an additional 0.5 cents per gallon gas tax will be deposited in the MTA beginning in FY 1996, as recommended by the Clinton Administration. Such an authorization level would not create a deficit in the MTA before 1998.

One possible means of accommodating more trust fund spending from the MTA would be to retain the total authorization limits on transit spending but provide appropriators with the ability to fund transit programs from either the trust fund or the general fund. For instance, assume that the ISTEA authorizes \$100 million annually for Program X, and that trust fund spending and general fund spending each are set at \$50 million. Under this proposal, Program X would be authorized at \$100 million annually, but authority would be provided to use up to \$75 million in trust fund revenue and up to \$50 million in general funds. This would give the Appropriations Committee flexibility to determine the source of program financing and the ability to rely more heavily on the trust fund if contract authority were less constrained than budget authority in a given year.

Extension of Existing Gas Tax

APTA strongly favors extending the 2.5 cents per gallon federal excise tax on gasoline that is due to expire at the end of September 1995. We believe that this tax, which is now used for deficit reduction, should be dedicated to transportation and deposited in the Highway Trust Fund (HTF). At least 20% of this tax, or at least one-half cent per gallon, should be deposited in the Mass Transit Account (MTA) of the Highway Trust Fund.

We are very pleased that Transportation Secretary Peña has proposed to extend the 2.5 cents gasoline tax and dedicate it to the Highway Trust Fund with an 80/20 split between the Highway Account and the Mass Transit Account -- two cents for the Highway Account and one half cent for the Mass Transit Account.

AMERICA'S NEW SURFACE TRANSPORTATION NETWORK

In closing, we would like to review with the Subcommittee an effort underway to deliver fully on the long-term promise of the ISTEA - creation of "America's New Surface Transportation Network."

Day-to-day progress in carrying out the intent and requirements of ISTEA have raised a number of issues that deserve the Subcommittee's close attention in the weeks and months ahead. From our experience, it is clear that we are not making as much progress as many had hoped for in fundamentally reorienting our decision-making processes and bringing a new intermodal balance to national surface transportation investment. In addition to our more immediate concerns, however, there is a longer term issue that we wish to bring to the Subcommittee's attention as well.

ISTEA calls for designation of a new National Highway System of 150,000 miles or more. The NHS is being characterized as "the centerpiece" of the ISTEA and the central element of our new national transportation strategy. A considerable share of the funding authorized by the ISTEA is to support improvement and expansion of this national system of highways.

In contrast, investment in transit - the full array of high-capacity, shared-ride systems and services - continues to be pursued through a traditional project-specific, federal grant-making process, the frailties of which are well documented. The contrast between providing contract authority funding for a national system of highways, and the laborious process required to secure annual appropriations and specific grant approval for each individual program of local transit investments represents perhaps the most glaring continuing bias in the surface transportation program.

It is shortsighted to view the centerpiece of the ISTEA as simply another version of a national highway system; the centerpiece should be seen as an integrated, balanced, intermodal network of intra-and intercity services and facilities. The concept of an integrated and expanded national system must be developed for the full range of high-capacity, shared-ride services that are envisioned by the ISTEA.

The transit industry is working to make this concept a reality. We can no longer think of urban and suburban transit, AMTRAK, commuter and high speed rail, intercity and rural providers as separate, independent services. We must think of them - and support their development and interconnection - as a national network, a network having as high a priority as a new National Highway System.

In partnership with other organizations, APTA recently unveiled America's New Surface Transportation Network. This map - which we have here today - along with accompanying information that will be made available in the coming weeks and months, represents the wide range of surface transportation options in our urban centers and suburbs, rural areas, and the corridors that cross the nation. In many areas of the country, these services and

facilities offer an alternative to the proposed NHS, and in many respects offer greater benefit in mobility, economic, environmental and social terms. In other areas, elements of the New Surface Transportation Network must be pursued in close coordination with highway improvements.

America's New Surface Transportation Network provides an essential, new focus for the vision and commitment contained in the ISTEA; it is bringing together an ever-increasing group of partners and supporters. We urge the Subcommittee to review progress in the continuing development of the Network as it considers NHS proposals, and to consider steps necessary to place these investments on a truly equal footing with those that will continue to be made on the nation's road system.

CONCLUSION

The transit industry will continue to work with this subcommittee to ensure that the ISTEA is effectively implemented and our country reaps the benefits that the authors of this visionary legislation intended. We will do our part to create and support a transportation system that sustains economic growth, meets the mobility needs of all Americans, and achieves the goals set by Congress in ISTEA, the Clean Air Act, the ADA, and other laws. With complete implementation of ISTEA's transit program, we can move toward these goals and begin to complete the National Surface Transportation Network that unites all of our country's regions and communities.

STATEMENT OF MICHAEL TOWNES

My name is Michael Townes and I am the executive director of PenTran which serves Hampton and Newport News, Virginia. The passage of ISTEA caused a great deal of excitement among transit operators in the Commonwealth of Virginia. The multi-modal philosophy embodied in ISTEA seemed to provide an opportunity to advance public transit as an important contributor in meeting the transportation needs of the residents of the Commonwealth. Transit providers were anxious to meet the challenge of trying to obtain funding under the new flexible provisions of ISTEA by presenting viable projects on a more level playing field. We were also anxious to compete for these projects on a regional, not statewide basis.

During the early implementation of ISTEA, PenTran experienced some success in obtaining flexible funding; but we also faced some major resistance to the concept of multi-modalism. This is a situation which has made the anticipated level playing field impossible to obtain.

In Virginia, State and local transportation officials, as well as others involved in the implementation of ISTEA have been slow to learn the new process created by ISTEA. There are many traditional biases that exist.

Notwithstanding the challenges we faced, PenTran has had some success in obtaining flexible funding under the congestion mitigation and air quality or CMAQ provision of ISTEA. During the first year of the authorization the two major transit operators in the Hampton Roads region garnered all of the CMAQ funding. Our sister agency—Tidewater Regional Transit—which serves Norfolk and surrounding communities used the CMAQ money for 20 transit coaches to provide express service on newly opened HOV lanes. PenTran purchased 4 replacement buses and we will soon be under construction of two badly needed inter-modal transportation centers in the downtowns of the two cities we serve.

The success we experienced didn't come easily. Even though there was little guidance from our State DOT, the projects were readily endorsed by the MPO technical committee. Elected representatives were approached and those of Hampton and Newport News strongly supported PenTran's projects. We thought that the programming of these funds at the MPO was a formality; but when the time came for the vote, a debate which was prompted by a letter from a local traffic engineer who wanted to pursue intersection signalization projects ensued over issues of eligibility, modal choice and the process by which these funds were to be distributed. The issue was decided when a representative from Newport News pointed out that members who were raising objections would in the future have projects which he might not support if they didn't recognize that the PenTran projects were the city's priority at that time. So the MPO then voted to approve these projects for CMAQ funding. There were some hard feelings left over from this debate. In fact, continued efforts to thwart the projects were carried out in later months including the dissemination of an interpretation of the CMAQ provisions which was made by a regional FHWA administrator. This interpretation contended that replacement buses were ineligible for funding under the CMAQ category.

Indications of lingering hard feelings persisted in May of 1992 as proposals for the use of fiscal year 1993 CMAQ funding were presented to the MPO technical committee. The staff of the State DOT and staff of the regional planning body which houses the MPO called a meeting of local traffic planners to program the FY1993 CMAQ funds. This meeting specifically excluded the transit operators, which is in clear violation of ISTEA. As a result, all of the fiscal year 1993 CMAQ money was programmed for signalization and intersection improvement projects.

After the experience of last year, the regional planning agency and jurisdictional representatives determined that a better process needed to be established for programming projects for flexible funding. A transportation improvement subcommittee was formed to review and prioritize projects for funding. Projects were prioritized with the highest priority going to projects with regional significance; next highest priority to projects that were multi-jurisdictional, and lowest priority to single jurisdiction projects. The two transit systems in the region achieved moderate success because all of our projects were regional or multi-jurisdictional. Funding for these projects include CMAQ funds, and National Highway System funds. Attempts to program surface transportation program funds were unsuccessful, however, due to the way the State distributes these funds. In effect, STP funds are included in the allocation formula the State uses to distribute funds for each jurisdiction within the State. It is by this allocation formula process that the State DOT circumvents the philosophy of ISTEA.

Clearly the new processes in ISTEA which my State is ever so slowly conforming with challenges transit managers to become more involved in the regional political process in order to advance transit projects. Transit operators are, however, at a dis-

advantage in the regional political arena. For instance, in my regional MPO there are three transit operators including the section 18 operation that serves a nearby rural county. There are also 14 jurisdictions, of which 4 are urban and the rest are suburban and rural. So in order to get a positive vote on a transit issue at the MPO the transit operators and urban jurisdictions must find support from jurisdictions which traditionally have a heavy road building bias.

Another disadvantage that transit operators suffer at the MPO and with our local jurisdictions individually is the fact that most highway projects require less dollar for dollar local match when compared to the local match requirement imposed on transit projects. This is true in Virginia because for highway projects the State provides the non-Federal portion, but transit match must come from the local jurisdiction. So politically, a local elected official sees greater local gain in terms of Federal and State dollars coming in when comparing highway projects against transit projects.

These disadvantages cause me a great deal of concern about the future of Federal support for transit because the perception of many in our industry is that the flexible funding provisions of ISTEA were, in a way, a challenge to transit to prove that it needs and deserves greater Federal support. Transit needs to be successful in getting flexible money during the present authorization, or, if not, that would be seen as an indication that transit indeed did not need or deserve added Federal support and that said support would be reduced with the next authorization.

I think that whether or not this perception is true, the core of this issue and of the frustrations that have been experienced by all modal managers with regard to ISTEA is that overall funding is not sufficient to meet the legitimate needs. This condition tends to pit mode against mode, and beyond that it pits need against need and jurisdiction against jurisdiction.

This is a situation that could be greatly relieved in the short term by appropriating all the money authorized by ISTEA. I was encouraged by the fact that the President's budget proposal for fiscal year 1994 includes a significant increase in transit funding, but dismayed that full funding was not proposed. I was also encouraged that the President's proposed budget includes a major increase in formula funding categories, but as a small operator I must say that I was very dismayed that the operating funding proposed is the same as this year's level, which will mean that for the twelfth consecutive year actual dollars remain the same, while inflation and the costs of doing business grows.

Thank you for the opportunity to make these remarks.

Question. With transit programs funded at so much less than the authorized funding levels, why were not more flexible funds utilized for transit?

Answer. There are several reasons, but the primary problem has been the fact that flexible surface transportation funds are still viewed primarily as highway funds. Flexible funds are not viewed with any neutrality. These funds are perceived as highway funding that can be wrested away by transit only after much effort and resistance by highway interests.

Another contributing reason for the lack of flexibility is that underfunding of all programs, including Title 23 has meant that there has not been enough funds to adequately meet any of our transportation infrastructure needs.

Testimony
of Tom Walsh
General Manager
Tri-County Metropolitan
Transportation District of Oregon (Tri-Met)
Before
Subcommittee on Surface Transportation
Public Works and Transportation Committee
U.S. House of Representatives
on
Implementation of ISTEA
April 27, 1993

Mr. Chairman, members of the Subcommittee. I am Tom Walsh, General Manager, of Tri-Met, Portland, Oregon's transit authority. I am honored and privileged to appear before you today to say that the ISTEA has been a success and to applaud you for the passage of the act of 1991.

ISTEA has been a positive development for Tri-Met and the Portland metropolitan region and has made it possible to conclude a contract with the Federal Transit Administration for a \$944 million new start rail project on the Portland area's Westside.

Construction on the project starts, literally, within weeks.

This is the first new start contract under ISTEA and until recently has been the only one. The contract would not have been possible without ISTEA.

Let me list the elements in the new law vital to the success of our contract negotiation:

1. First, the overall support and encouragement for new start projects generally, including authorization limits and project endorsement.

2. Flexibility provisions, which have allowed our region to plan financing for the project's second segment.

3. Interrelated project authority which has tied our project segments together to ensure their completion.

4. And, expedited review authority which has encouraged us to plan a maximum of one-third Section 3 funding on our second segment and to allow the process to speed up.

First, let me set the historical context for the Portland LRT system and then discuss in detail the opportunities ISTEA has given us.

Twenty Years of Innovation, Flexibility and Partnerships

Innovation

Twenty years ago the Portland region made the momentous decision to move away from a freeway based approach to solving urban transportation needs. We chose instead to move toward a more balanced approach which put transit and road construction on an even footing and made significant new funds available for transit construction.

It did it in a manner familiar to ISTEA: It limited vehicle miles traveled with a parking lid; it defined its urban area with a growth boundary; it required autos to meet clean air demands; and it looked to a non-auto surface transportation mode.

Portland's successful Banfield Light Rail Project was the result.

And in the past twenty years we have reduced congestion and air pollution, preserved a vital and growing downtown business core, reduced suburban sprawl, and leveraged nearly \$1 billion in new private sector investments associated with transit development.

Partnerships

The decision to pursue these projects was the result of strong transportation planning and a commitment to transit as one of the key means by which the region intends to accommodate future growth.

All three counties, the cities; Metro, the metropolitan planning organization; Tri-Met; the Oregon Department of Transportation; the Port of Portland; and, most recently, C-Tran, the transit district for Vancouver, Washington, sit at the regional table.

It is the region's process of operating by consensus that provided the political support that in turn produced the dramatic changes occurring in the Portland region.

Flexibility

Our experience with the Interstate Transfer Program (the e(4) program) proves that transportation generally can clearly benefit from the flexible funding opportunities available under ISTEA. And it also proves that transit can help address the major transportation challenges facing cities.

Portland withdrew two Interstate sections and was able to fund 141 road projects in addition to the Banfield LRT system, whose total Section 3 funding accounted for only 28 percent of the project costs.

ISTEA Opportunities

We would like to take this opportunity to discuss the opportunities under ISTEA which we have taken advantage of, and those we would like to use in the future.

Flexible Funding

Flexible funding was a new concept at the beginning of 1992. But with some experience of the Interstate Transfer Program, Portland moved to reduce the Section 3 request for our second segment to Hillsboro to one-third of project cost.

Another one-third was cooperatively put together by contributions of flexible formula funds from our local MPO, Metro; by the State Department of Transportation (ODOT); and Tri-Met's own Section 9 funds.

Clearly this would have been impossible without ISTEA.

Interrelated Projects

ISTEA recognized that certain urban system elements are so interrelated that one makes no sense without the other.

This is certainly the case with the two segments of our Westside project. Divided by two separate Environmental Impact

Statements these segments might have had difficulty being finished in a timely fashion.

Thanks to the Interrelated Projects authorization it was possible to lock the project into the Full Funding Grant Agreement.

Expedited Review

The worry over two Environmental Impact Statements for one rail line seems to be at rest. Recently FTA granted approval of the Draft Environmental Impact Statement (DEIS) for the Hillsboro segment.

Clearly, if the above ISTEA authority had not been in hand, flexible funding; interrelated authority; and the expedited review would not have taken place.

FFGA Negotiations

As the first "new start" project to negotiate an FFGA under ISTEA, and as an agency which has sought to take advantage of some of the new ISTEA provisions, Tri-Met has some observations regarding the implementation of ISTEA that might be helpful to the Public Works and Transportation Committee.

As with the passage of any new comprehensive authorization, the implementation of ISTEA has occasioned an adjustment period. As a region familiar and comfortable with the philosophy of ISTEA we were anxious to move forward quickly -- at times perhaps more quickly than FTA was able to accommodate.

Tri-Met and FTA spent considerable time coming to a common understanding on the significance to be attached to those projects which were part of a Program of Interrelated Projects. FTA was at first unsure -- but now appears comfortable with -- reflecting that status in the FFGA, especially as it pertains to the Hillsboro Extension.

We feel that the Westside FFGA could have benefitted significantly from the utilization of the contingent commitment authority established by ISTEA.

First, the Westside Project was originally projected to require \$565 million in Section 3 funds to complete. When Congress opted to authorize only \$515 million and postpone the final year until the next authorization, Tri-Met sought contingent commitment authority to enter into an FFGA for the full amount needed.

Ultimately, the pressure of time and the inflationary impact of a static level of local match compelled Tri-Met to eliminate or defer a number of project elements.

Second, Tri-Met did not attempt to "bank" monies through the appropriations process. Thus, any shortfall in funding below the Section 3 funds needed to satisfy the federal obligation in FY 94 and in subsequent years will require interim financing until the necessary Section 3 monies are appropriated.

Recognizing the probability of that scenario, Tri-Met unsuccessfully sought to have the existence of the contingent commitment authority reflected in the FFGA.

The guarantee that the federal government would honor the FFGA and would have eventually provided the total amount of Section 3 monies set forth in the FFGA would have greatly enhanced Tri-Met's ability to secure interim financing.

Conclusion

Tri-Met and the Portland region are grateful beneficiaries of the Committee's foresight in passing the ISTEA and authorizing the Westside Project.

We will continue to work with FTA to reach the full potential of this important legislation as we complete our regional rail network.

ADDITION TO THE RECORD



HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

ROMANO L. MAZZOLI
THIRD DISTRICT
KENTUCKY

May 6, 1993

93 MAY -7 AM 8:42

The Honorable Nick J. Rahall, II
Chairman
Subcommittee on Surface Transportation
B376 Rayburn Building
Washington, D.C. 20515-6261

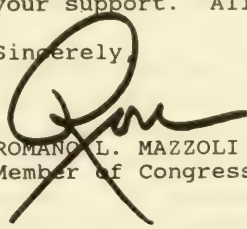
Dear Nick Joe:

Mr. Charles B. Castner, Jr., a constituent of mine and a co-chair of the Railroad Task Force of Kentuckiana, has prepared testimony to be included for the record of your distinguished panel's hearing on transit issues on April 27, 1993.

I am enclosing Mr. Castner's statement. Please let me know if I can provide further information.

Thanks for all your support. All best wishes.

Sincerely,


ROMANO L. MAZZOLI
Member of Congress

RLM:ml1
Enclosure

cc: Mr. Charles B. Castner, Jr.

Thank, my friend

MAY 05 1993

Honorable Nick J. Rahall II
Chairman, Subcommittee on Surface Transportation
(of House Committee on Public Works & Transportation)
B 376 Rayburn Building
Washington, DC 20515- 6261

Re: Amending Federal Transit Admin. Sect. 18 Formula Program

Dear Congressman Rahall and Committee Members:

Thank you for the opportunity to present testimony in connection with Section 18 and its related transit provisions.

I am co-chairman of the Kentuckiana Railroad Task Force, representing the metro Louisville area. We are a volunteer citizen group assisting in efforts to bring back railroad passenger service to a five-county urbanized area with over 750,000 population. The area has not had rail passenger service since October 1979, when Amtrak's Chicago-Louisville-to-Miami and Tampa "Floridian" trains were discontinued.

Louisville is the largest city in the Commonwealth of Kentucky. It is also the center of the above-mentioned five-county urbanized area which also includes the Southern Indiana cities of Jeffersonville, Clarksville and New Albany. The area is expected to exceed one million in population in the next decade or by the year 2010.

Jefferson County, of which Louisville is a part, ranks also as Kentucky's top county for tourism and vacation travel. About 20 percent of all tourism dollars spent in Kentucky in 1992 were spent in Louisville/Jefferson County. In the last six month fiscal period (July '92- February '93), 262 conventions and trade shows brought some 500,000 visitors to the city and county.

As noted previously, the city has not had rail passenger service since 1979 and is the fifth largest urbanized area nationally without such service. Meanwhile, certain highway corridors within the area have already reached high air pollution levels; at peak morning and evening rush hours, the area's several Interstate highway corridors and associated Ohio River bridges become congested, and drivers routinely face delays.

(more)

Rahall Testimony- 2

With predictable growth and increasing environmental mandates, our urbanized area clearly needs alternate high occupancy transportation modes to help us relieve our dependence on the automobile. Which is also why Louisville needs to be linked as soon as possible to Amtrak's national passenger rail system. We see bus and conventional train links as progressive steps toward eventual high-speed passenger rail service and the related economic, environmental and social benefits it will bring.

But unfortunately, because of a variety of unfavorable conditions, prospects in the short term for bringing direct rail passenger service to Louisville are slim. Commercial intercity buses do link Louisville with Cincinnati and Indianapolis, where there is Amtrak service: however, those buses do not stop at Amtrak stations in either city nor are their schedules coordinated with Amtrak's. The same holds true for air service between those cities. And at present, the poor condition of the existing freight rail line between Indianapolis and Louisville precludes routing of a proposed Chicago-Florida Amtrak train over that line (as a result, Amtrak favors a Western Kentucky route, should that long distance service ever be inaugurated).

That rationale has led our task force to propose an interim express bus service from Louisville to Indianapolis, to connect with a daily Indianapolis-to-Chicago- and- return passenger train, which also makes excellent connections at Chicago with other daily Amtrak services to the Midwest, Southwest and Pacific Northwest, popular destinations (along with Chicago) identified by many Kentuckiana area travelers and tour groups. Some of those travelers now drive their own cars or charter buses to make the Louisville-Indianapolis segment of their trips.

The express bus service we propose would operate as a coordinated service with Amtrak and would follow guidelines for Amtrak's other Thruway Bus Connections (as they are advertised), so successful elsewhere in the nation. Amtrak informs us that many

(more)

Rahall Testimony- 3

such Thruway Bus operations become self-sustaining, once the service is established and ridership is built.

We seek maximum available funding through Section 18 to develop an alternative express bus service and maximize benefits of intermodal connections at Indianapolis with Amtrak's intercity rail passenger services. As Section 18 is now worded, only rural or non-urbanized-to-urban area bus services now qualify for funding. We request that provisions of Section 18 be expanded to also include intercity bus service between two urbanized areas so that urbanized areas such as ours can also take advantage of Section 18 funding for alternative transportation options and the obvious benefits previously cited.

And, if commercial carriers presently operating in urban-to-urban corridors have no interest in providing the coordinated bus-rail service we desire, we also request that restrictions be waived so that Section 18-subsidized carriers might provide this service.

Again, we advocate the Louisville-Indianapolis coordinated rail-bus service as a short term measure, designed to quickly and inexpensively connect our metro area to national rail passenger service. Should a Louisville-Indianapolis service then prove successful, we then urge comparable coordinated services to other nearby Amtrak-served cities, to offer additional travel options not only for our own citizens but for many others wishing to travel here. And, as previously noted, we fully expect the progressive conversion of some or all of those services to conventional passenger trains and, eventually, high speed passenger trains. All of which will promise that our area and its environs can meet future growth and development while protecting our environment and conserving energy. Thank you again for hearing our testimony.

Respectfully,

Charles B. Castner, Jr.

Co-Chair, Railroad Task Force of Kentuckiana

April 26, 1993

IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT (ISTEA)

**(Transportation Enhancements; Indian Park, and
Public Land Roads; Scenic Byways, and Rec-
reational Trails)**

WEDNESDAY, APRIL 28, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m. in room 2167, Rayburn House Office Building, Hon. Nick Joe Rahall, II (chairman of the subcommittee) presiding.

Mr. RAHALL. The subcommittee will come to order, please.

The Subcommittee on Surface Transportation is meeting today to continue our series of oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

One of the things ISTEA did was to dramatically broaden the constituency normally associated with what once was viewed as Federal highway bills. ISTEA is obviously more than just a highway bill, and it is more than just a transit bill.

As today's hearing illustrates, with ISTEA this committee moved both the Department of Transportation and, frankly, itself into new territory. We now find matters as diverse as historic preservation to recreational trails being debated and discussed in the same forum as the national highway system and funding for urban sub-way systems.

Today's hearing will focus on some of the new initiatives contained in ISTEA—the transportation enhancements program, the scenic byways initiative, and the recreational trails fund. We also will be examining the Federal lands highway program.

As a long-time member of the Interior Committee, now the Natural Resources Committee, I am extremely sensitive to these issues and have been for a number of years. In particular, this gentleman from West Virginia has a longstanding interest in the national park system, the way we manage our public land heritage as a whole, and the pressing need to increase our historic preservation efforts.

Moreover, I would note that anybody who served on the Interior Committee under Mo Udall's chairmanship and now under that of

Chairman George Miller is fully aware of the pressing and severe problems facing Native Americans.

At this point, I would digress for a moment to make a brief observation on one matter of particular concern. As we know, ISTEA added a provision to the Highway Beautification Act that generally prohibits the erection of new billboards along scenic byways. As a member of the Conference Committee that fashioned ISTEA, I would submit that the purpose for this provision was to protect truly scenic areas.

Our discussion of this provisions at the time related to scenic values. I believe that the understanding of the Members was that it related solely to roads in scenic areas.

Some question has since been raised as to whether this provision overrides other provisions of the Highway Beautification Act that permit the erection of billboards in commercial and industrial areas. In other words, could a State circumvent the requirement of the Beautification Act by designating a segment of the highway passing through a commercial or industrial area as a scenic byway?

While each State certainly has the authority to designate scenic byways, in the view of this gentlemen it was never intended, nor was the possibility ever even discussed, that a State could designate a scenic byway through a non-scenic area — in other words, a commercial or industrial area—and thereby prohibit new billboards where billboards have always been allowed under the act subject to State discretion.

Moreover, I would submit that a clear reading of this provision is that it does not override other provisions of the law relating to commercial and industrial areas. There is no suggestion in the provision that it protects more than what it claims to protect, and that is scenic beauty.

A basic feature of the Beautification Act is to permit States to allow billboards to remain in commercial and industrial areas. In my view, if Congress had intended to override longstanding provisions of the act such as this one, we would have explicitly done so.

I make these remarks from the perspective of one with a great interest in parkways and byways and the protection of some of our Nation's most significant and outstanding scenic areas.

That concludes my opening statement. Before proceeding with today's witnesses, I will recognize a gentleman from the State of Pennsylvania, the ranking minority member of the full committee—one who is vitally interested in this issue, as well—Representative Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman.

Mr. Chairman, I can confirm your observations that the prohibition on erection of billboards on scenic byways is meant to apply only in scenic areas. It is a bizarre interpretation to suggest anything otherwise.

As a conferee on ISTEA, I can state that the members never intended the designation of industrial or commercial areas as scenic areas. To read the language otherwise would lead to an absurd result—that a State could designate—think about this—that a State could designate roads through urban areas, through blighted areas, through commercial and industrial areas, as scenic byways. You could have a scenic byway running through a steel mill, and there-

by take away the commercial and industrial exemption in the Beautification Act. It just doesn't make any sense.

Taken to the extreme, a State could simply designate all its roads as scenic, eliminating the commercial and industrial exemption, which was clearly intended in the bill.

The provision in the Highway Beautification Act for commercial and industrial areas is a critical part of the law. While the law controls billboards outside of those areas, it explicitly authorizes them in the commercial and industrial areas. Congress never intended to make a wholesale change in this aspect of the law.

The provision added by ISTEA was intended to ban new billboards on scenic byways. Congress intended that this ban be nothing more than it appears to be—a ban on new billboards in scenic areas.

Thank you, Mr. Chairman.

Mr. RAHALL. The Chair thanks the gentleman from Pennsylvania.

The Chair recognizes the gentleman from Wisconsin, the ranking minority member of the subcommittee, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman.

This morning our subcommittee will discuss a broad range of transportation issues, ranging from established programs such as the Federal lands program, to new initiatives, including transportation enhancements and recreational trails.

I was pleased, myself, to have the opportunity to work with Senator Steve Symms in establishing the recreational trails trust fund, which is funded through non-highway gas tax revenues. Funding provided for this program in annual appropriation bills, however, has been disappointing. Obviously, this has decreased the benefits which could be realized from the trails program.

I welcome the testimony of trail users who are here this morning regarding the status of the program, problems they are facing, and possible improvements to the program.

We also have a panel from Georgia to discuss a very innovative program utilizing Federal trail and job training funds, as well as other public and private contributions which will provide jobs for young people this summer.

I also would like to welcome the other witnesses who are here this morning. I look forward to another interesting hearing of the subcommittee.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Petri.

Mr. Collins from Georgia?

Mr. COLLINS. Thank you, Mr. Chairman.

In reference to remarks made earlier about the intention of Congress, the old saying is: "The road to the poor house is paved with good intentions." I have noticed in my short tenure here that a lot of intentions of Congress have been interpreted by others who in the past are now leading us down the road to the poor house.

But in reference to testimony to be given here today, I, too, would like to welcome residents from Georgia who are here to testify on a very worthwhile project in Georgia, Project Opportunity, that not only will enhance the beauty of the North Georgia Mountains with trails leading through, but will also enhance the self-es-

team of many young people who will be involved in the refurbishing and opening up of new trails.

With that, I will close.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from New Jersey?

Mr. FRANKS. Mr. Chairman, no thank you.

Mr. RAHALL. We will now proceed with our first witness of today, the Honorable Bill Richardson, Representative from New Mexico, and Chairman of the Subcommittee on Native American Affairs, Committee on Natural Resources. I have had the pleasure of working with Mr. Richardson on the Committee on Natural Resources and on a number of other issues for many years.

It is indeed our pleasure to have you before this subcommittee today, Bill.

TESTIMONY OF HON. BILL RICHARDSON, A REPRESENTATIVE IN CONGRESS FROM NEW MEXICO, AND CHAIRMAN, SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES

Mr. RICHARDSON. Mr. Chairman and members of the subcommittee, thank you for allowing me to testify. Thank you for the kind words.

First of all, I want to commend the subcommittee and this committee for the good work they did on the ISTEA bill, and especially the way they dealt with the Native Americans population in this country. So, first off, I think you dealt with this issue with skill and sensitivity, and Indian country will benefit from the work that all of you did.

Mr. Chairman, your willingness to listen to the problems of Indian tribes in dealing with an adequate infrastructure and your dedication in securing increased funding for Indian Reservation Roads has brought us to this day.

I'd also like to commend the subcommittee for including a Native American panel at your hearing today. The Mille Lacs Band of Chippewa [sic] Indians is a tribe in Minnesota which has established a successful gaming enterprise and uses the proceeds to build and renovate much of their reservation.

As you are well aware, any growth puts a strain on roads and bridges, and this extraordinary growth puts them in an ideal situation to explain their experience with ISTEA implementation, I'm sure the Chief Executive of this tribe, Marge Anderson, will do just that.

The Hoopa Valley Tribe of California is attempting to take full advantage of ISTEA to directly manage tribal road planning and construction—the tribe is moving towards gaining expertise—to run their roads program in-house. This was exactly the intent of the Indian provisions in ISTEA, and it is imperative that tribes be assisted and encouraged in this direction.

I'm sure that the testimony you will hear today from the Oglala Sioux of South Dakota and the Navajo Nation will give you a perspective from large tribes in isolated areas.

The National Congress of American Indians and the Affiliated Tribes of Northwest Indians should round out the Indian testimony with overall tribal reaction to ISTEA.

While this panel will give you the details and specifics, I'd like to just touch on a couple of issues.

First, ISTEA mandates that State governments include Indian tribes during road planning. I asked that when States which have Indian tribes within their borders come before you, you ask them about meetings with tribes and whether they are receiving input from the tribes. If States are not meeting with tribes during the planning process, then ISTEA is not working.

Tribes are not "political subdivisions" of States. They are sovereign governments, and any provisions within ISTEA which describe Indian tribes as "political subdivisions" of States should be amended.

I am concerned also, Mr. Chairman, with a big problem—the way the Bureau of Indian Affairs has implemented the planning set-aside within ISTEA. I have directed my staff to examine the program and report to me with recommendations for improving it so that the original intent of the provision to allow tribes to complete road planning can occur with minimal bureaucratic obstacles.

The problem is this, Mr. Chairman: because of the over-bureaucracy at the Bureau of Indian Affairs, the 2 percent set-aside that you put in for planning has been divided up by the Area Directors of the Bureau of Indian Affairs, as opposed to the money going directly to the tribes. That's a bureaucratic problem that I have as the chairman of the subcommittee authorizing the BIA, but it is something that I want you to be aware of, too.

I am sure you will hear problems the tribes have in dealing with the BIA on this issue. I think that greater assistance to Indian tribes from the Federal Highway Administration would be most valuable. There are close to 500 Federally-recognized Indian tribes and Alaska Native Villages in this country, and yet the Federal Highway Administration has, as best I can tell, only a couple of employees charged with working on Indian reservation road issues.

There has to be better communication between the Bureau of Indian Affairs and the Federal Highway Administration, and that relationship must include tribes directly. It is just not happening, Mr. Chairman. Again, it is not happening.

Since the 1970s, Congress has backed away from the previously-failed paternalistic Federal Indian policies—and, instead, has embraced an era of Indian self-determination. The tribes can deal with these problems, themselves. They have the sovereignty and the will. This new direction allows and encourages tribes to decide their own future and plot their own course. This must be done while, at the same time, accepting and acting in accordance with the Federal trust responsibility.

Finally, Mr. Chairman, the tribes of today don't need the Federal Government to tell them how to govern and care for their people, what language they should speak in their homes, or what roads should be built where. What tribes do need is technical assistance, respect, access to experts, and less bureaucracy so that they can become self-sufficient.

True self-determination means making all decisions affecting the internal matters of the tribe, determining the destiny of the tribe, and dealing with States as co-equal sovereigns.

Although there are no Federally-recognized tribes in West Virginia, Mr. Chairman, you have been a long-time friend of Indians as a member of the Natural Resources Committee, and I look forward to continue working with you and the members of this subcommittee, and thank you for the great work you have already done.

Again, Mr. Chairman, as you look at implementing this legislation, I am pointing out some problems that already exist. But, overall, as I said, I commend you for the very good work that you have already done to bring Native American tribes to the table of the ISTEA funding.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Bill. I appreciate very much your testimony, as well as your work on behalf of Native Americans in your chairmanship of the Subcommittee on Indian Affairs.

While we may not have any reservations in my home State of West Virginia, we do have a lot of Native American spirit, and I have enjoyed working with you over a number of years on that committee.

I do have just a general question, and that's in regard to the overall provisions of ISTEA as they relate to Indian lands.

Do you think the structure is sufficient as we have set it up in ISTEA to help tribes become economically self-sufficient on their reservations?

Mr. RICHARDSON. Yes, Mr. Chairman it is a very good start. The amount for Indian tribes—191 million—is generous. The language for the set-asides that basically says those tribes interested in their own planning can have an allocation for planning was generous and far-sighted.

The problem really is that in implementing this legislation we have a problem—not the direct cause of this committee or the agencies that this committee oversees.

As I said before, these 2 percent monies that are supposed to go to the tribes for planning appear to have gone to the Area Directors of the Bureau of Indian Affairs. The Washington D.C. head of the BIA Indian Reservation Road Program will be testifying later. One of the problems is that there is not enough supervision over those Area Directors that have a bunch of fiefdoms, and they are spending the money on bureaucracy instead of roads. They have asked to divide up that 2 percent.

So it is a problem that we have, and that we want to resolve in our subcommittee, too. But I think you should insist that the money be directed to go to roads and not bureaucracy.

Second, Mr. Chairman, as I said, I think the Federal Highway Administration has to work closer with the States and the tribes to identify some of these roads that have priority. There is just not enough personnel, as I mentioned, at the Federal Highway Administration, or sensitivity to recognize the priority that this committee has given to Indian roads. It doesn't seem to exist.

Everybody has to compete equally. I'm not asking for any special favors for the tribes. But there is just very little focus on their needs. As I said before, they need technical assistance, expertise, access to experts. But they also need to be asked and consulted on what roads have priority. A bureaucrat in Washington shouldn't

determine what roads should be built on the Navajo Nation. It should be a cooperative effort.

Mr. RAHALL. You said the Federal Highway Administration should be of greater assistance in developing transportation infrastructure and being of assistance. Do you see, on down the road, the need to reduce or possibly even eliminate the role of the BIA in the administration of the Indian reservations roads program?

Mr. RICHARDSON. Mr. Chairman, I am of the view that it is in the best interest of those tribes which are willing and interested in taking over their roads program to be treated more like States, and tribes need to have less bureaucratic obstacles thrown up at them so that they can become more self-sufficient.

So again, Mr. Chairman, I do think that the BIA, in many cases, is the problem. What we need to do is find ways to make the tribal-BIA relationship with the Highway Administration more efficient.

Mr. RAHALL. That's similar to what we did in the abandoned mine reclamation program, is it not? We provided the monies directly to the tribes rather than going through the State or any other—

Mr. RICHARDSON. That's right, Mr. Chairman.

Mr. RAHALL. That's all I have.

The gentleman from Wisconsin, Mr. Petri?

Mr. PETRI. Thank you, Mr. Chairman.

I just want to thank you, Bill, for coming in and highlighting your concern in an important area. I want you to know—and anyone who is watching from the Federal Highway Administration, that our subcommittee chairman and I are both eager to work with you in making sure that the concerns of the Indian tribes are listened to and not just brushed aside, and that they get fair and equitable treatment as we go about trying to develop all of our Nation.

Mr. RAHALL. I thank the gentleman.

The Chair recognizes the distinguished chairman of our full committee, Chairman Mineta.

The CHAIR. Let me thank you, Mr. Rahall, for your leadership. And I also want to thank our very fine colleague from New Mexico for the work that we were able to do on ISTEA. He was very, very helpful during those deliberations when we were putting ISTEA together, and I appreciate the comments that have been submitted here.

I am sorry that I haven't had a chance to really go through your statement yet but, in any event, let me just thank you for the work during the time we were putting ISTEA together.

I also ask unanimous consent to put my statement into the record.

[Mr. Mineta's prepared statement follows:]

STATEMENT OF HON. NORMAN Y. MINETA

The significance of ISTEA rests in the many innovative programs that were designed to promote a better quality of life for all Americans. Within the structural components of the Federal-aid highway program that has been modernized in ISTEA—the Interstate System, the National Highway System, the Surface Transportation Program, highway safety—are contained other, original provisions that set this legislation apart from previous highway enactments. The testimony today will address the major of these new elements: enhancements, scenic byways, recreational trails, bicycle and pedestrian facilities, and Federal lands highways.

Since these programs represent a new approach to transportation policy, the comments provided by the witnesses will provide us with valuable insights into how well the benefits envisioned in these programs are being realized.

The transportation enhancements, scenic byways, recreational trails, bicycle and pedestrian facilities should be having the effect of relieving congestion, improving air quality, increasing the ability of Americans to enjoy the beauty and history of their country, and facilitating the use of nonmotorized, nonpolluting forms of transportation. The Indian Reservation Roads program should be helping tribes to develop an infrastructure that will in turn help them become economically self-sufficient.

While it may be too soon to determine whether legislative or administrative fixes need to be made, today's hearing should provide us with important information that will permit us to determine whether implementation of these programs is on the right track.

Mr. RAHALL. The gentleman from California, Mr. Kim?

Mr. KIM. No questions. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard?

Mr. POSHARD. Thank you, Mr. Chairman.

Just quickly, first of all, Bill, I want to thank you for being here. I don't think there is anyone in this Congress who has brought greater sensitivity to the issues of Native Americans than you have, and I appreciate that. I think we all do.

I just want to ask you very quickly: is there some evidence that the State governments are not including the Native American tribes during their road planning now for ISTEA? Or is that just a concern that you want to raise to us?

Mr. RICHARDSON. Mr. Chairman, I think you will hear from some tribes today that there are some specific incidents where States are not giving proper due and consultation to tribes. They will be, I think, following me.

I know it is the case, for instance, with some of the tribes in my State. The Navajo Nation I think will also make the same statement. As you know, their reservation is in four States.

So, Mr. Chairman, I think it does need some attention by this committee. Again, we are talking about very sensitive relationships, because tribes are sovereign, and sometimes the Federal Highway Administration and some of the States are uneasy with how to deal with that.

Mr. POSHARD. Thank you, sir.

Mr. RICHARDSON. Mr. Chairman, I want to thank you, but also to recognize the great help that the chairman of the full committee, Mr. Mineta, had for the drafting of this legislation.

Mr. RAHALL. Thank you, Bill.

Mr. RICHARDSON. Thank you.

Mr. RAHALL. The subcommittee will now hear from a panel composed of the following individuals: Mr. Anthony R. Kane, the Associate Administrator for Program Development from the Federal Highway Administration, U.S. Department of Transportation; accompanied by Mr. Thomas O. Edick, the Federal Lands Highway Program Administrator; Mr. Dennis P. Galvin, Associate Director for Planning and Development, National Park Service, Department of Interior; accompanied by Mr. Richard P. Geiger, Chief, Division of Transportation, Office of Trust Responsibility, Bureau of Indian Affairs; and Mr. John Moeller, Deputy Assistant Director for Support Services, Bureau of Land Management. The third panelist will

be Mr. Henry M. Montrey, III, Associate Deputy Chief, National Forest Service, Department of Agriculture.

Gentlemen, we welcome you to the subcommittee. As with all witnesses today, we do have copies of prepared testimony and, without objection, all of the testimonies will be made part of the record as if actually read.

As we do have a long list of witnesses today, all witnesses are encouraged to summarize their prepared testimonies.

TESTIMONY OF ANTHONY R. KANE, ASSOCIATE ADMINISTRATOR FOR PROGRAM DEVELOPMENT, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY THOMAS O. EDICK, FEDERAL LANDS HIGHWAY PROGRAM ADMINISTRATOR; DENNIS P. GALVIN, ASSOCIATE DIRECTOR FOR PLANNING & DEVELOPMENT, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RICHARD P. GEIGER, CHIEF, DIVISION OF TRANSPORTATION, OFFICE OF TRUST RESPONSIBILITY, BUREAU OF INDIAN AFFAIRS, AND JOHN MOELLER, DEPUTY ASSISTANT DIRECTOR FOR SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT; AND KENNETH, L. GRANNEMANN, CHIEF, BRANCH OF TECHNICAL SERVICES, DIVISION OF REFUGES; AND HENRY M. MONTREY, III, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. KANE. Thank you, Mr. Chairman.

On behalf of the Federal Highway Administration and Secretary Peña, it is a pleasure to be before the subcommittee.

I would like to highlight some of the programs you asked to hear about today—enhancements, scenic byways, recreational trails, bicycle and pedestrian programs, and the Federal lands highway program.

ISTEA is truly a landmark piece of legislation that has brought about a lot of new programs and a lot of new partners.

With regard to transportation enhancements, the law requires that 10 percent of the surface transportation funds be dedicated solely to enhancements.

If we take a look at the record to date, only about 15 percent of the available funds for fiscal years 1992 and 1993 have been obligated on enhancements. There are a number of reasons why.

I think, first, the States are setting up processes to really screen and evaluate a lot of the competing proposals and there is real strong and very good competition for the enhancement funds—and it is a new game with lots of new players for the States. It will take a while for some of those processes to play out.

Another reason is many States didn't have available enhancement projects on the shelf ready to go; still another is the lack of available matching funds from a lot of the local participants who will make use of the enhancement funds; and also, very importantly, the lack of full obligation ceiling for the ISTEA programs has made it very difficult for some of the new programs to really get started.

Hopefully, full funding of ISTEA in the FY 1994 budget and beyond will let us see a much greater use of enhancement funds.

There have been a lot of good projects—for example, bicycle projects in Colorado, and removal of signs along scenic highways in Colorado, and historic rail depots in Wyoming.

We have been summarizing these activities and will be sharing a lot of the good examples of projects which are developed with enhancement funds.

With regard to scenic byways, the interim program is currently underway. It is a \$10 million a year program. We have had grant applications 2 to 3 times the amount available, for example, for 1993, we received applications for about \$31 million for the available \$10 million.

One feature of ISTEA is that if you get the discretionary scenic byways funds you potentially lose under minimum allocation if you are a minimum allocation State, and so an awful lot—virtually most—of the minimum allocation States have not put in a request for scenic byways funding.

With regard to recreational trails which we are jointly administering with Interior, we see lots of enthusiasm for that program. It did not have contract authority. We funded it at a rate of \$7.5 million in FY 1993, and we are asking for \$15 million in FY 1994.

With regard to the bicycle and pedestrian programs, ISTEA called for each State to establish bicycle coordinators, and all but one have established those State-wide bicycle coordinators. We have held nationwide conferences to pull together all the bicycle coordinators. We see a lot of increased activity with regard to bicycles post-ISTEA as opposed to pre-ISTEA—a much larger level of expenditures from regular Federal-aid categories, as well as from congestion mitigation and air quality programs, and the enhancement funds.

I want to touch on a few points with regard to the Federal lands highway program, which was significantly increased in ISTEA.

We have been working with the involved Federal agencies to jointly deliver this program in a very effective manner.

We have been holding and will continue to hold a series of meetings with the Indian tribes, to explain hopefully, a lot of the new provisions and to hear input and guidance on how to better handle a lot of the new provisions of ISTEA, at four conferences in Albuquerque, Minneapolis, Anchorage, and Portland. In addition, a TRB conference will be held to deal with not only transportation, but broader economic issues.

With regard to the public lands program, ISTEA combined the old forest highway program and public land categories into one, and we will be working on regulations for the forest program that will come out in the near future.

With respect to Indian reservation roads, mentioned earlier here in the testimony, we have been working with BIA with regard to the 2 percent for planning funds, and will do more with regard to that to try to make it a much more effective program.

The public lands discretionary program is always a very popular program. For example, in fiscal year 1993, 38 States requested \$180 million for the \$58 million that were available.

With regard to Federal lands in general—and excuse me for not introducing Tom Edick, our Federal Lands Highway Administrator, who is here at the table with me and will be responding to a lot

of the questions that come up later, Mr. Chairman—we have been actively working with the Park Service, the BIA, and the Forest Service in developing transportation planning procedures.

Again, ISTEA in many new partners. The Federal lands program is one of the new considerations with regard to transportation planning. Many of the new players are already active in transportation planning. Transportation planning is a brand new requirement of ISTEA at the State-wide level. I do think there is a little hesitation in getting all the partners involved. We are working very actively on it, and it is going to be something I think will improve in time as ISTEA plays out.

Federal lands programs also have new requirements for management systems for safety, bridge, and pavement management. We are actively working on developing regulations for them.

Congress also asked for a study to look at how to better allocate amongst Federal lands categories based on needs. We expect to complete that study by December of this year.

The 1994 budget for Federal lands calls for an increase of \$36 million, with \$23 million of it for park roads and parkway programs.

In summation, let me just indicate that we really are thrilled with a lot of the new opportunities in ISTEA. We feel we are working very actively with a lot of the new partners on it. We have a commitment in this Administration clearly towards infrastructure and towards the environment, and I think the programs we have talked about have the ability to really meet both goals on infrastructure enhancement and on environment.

Thank you, Mr. Chairman.

Mr. RAHALL. Mr. Galvin, do you want to go next?

Mr. GALVIN. Mr. Chairman, I am making a statement on behalf of the Department. Each individual bureau has submitted a statement for the record. I will simply summarize overall for the Department. Then my colleagues—Mr. Geiger with the Bureau of Indian Affairs; and John Moeller, on my left, with the Bureau of Land Management; and Ken Grannemann, behind me, with the Fish and Wildlife Service—will be able to answer any questions about their individual programs.

As I have indicated in my introductory remarks, several Bureaus—

Mr. RAHALL. Excuse me, Mr. Galvin. I think you mentioned one gentleman there we don't have on the list here. Who is from Fish and Wildlife?

Mr. GALVIN. Mr. Grannemann.

Mr. RAHALL. Would you spell his full name and title for the record, please?

Mr. GALVIN. Kenneth, K-E-N-N-E-T-H, L. Grannemann, G-R-A-N-N-E-M-A-N-N. His title is Chief, Branch of Technical Services, Division of Refuges.

Mr. RAHALL. Thank you very much.

Mr. GALVIN. As I have indicated in my opening introduction, several bureaus in Interior have programs involving ISTEA. The Department's land management responsibilities do involve the construction and maintenance of road on public lands. In addition, several of the bureaus have responsibilities involving comprehensive

transportation planning assistance related to their place in the larger community and State programs.

As I have said, there are individual statements attached to this introductory statement about each bureau's programs, and I will simply summarize in this statement each bureau's programs.

The National Park Service is involved in ISTEA through the parkway and park highways program, which Mr. Kane mentioned. And we work with Mr. Edick very closely on that. The act authorized \$486 million over six years, and that program is executed in cooperation with direct Federal offices of the Federal lands highway program.

In addition, the National Park Service provides technical assistance to States and communities in transportation planning, principally in relationship to the comprehensive outlook of ISTEA with respect to inter-modal transportation networks. In particular, we have been working with the Federal Highway Administration and others in a series of regional workshops that particularly focus on the role of things like bicycle paths, pedestrian trails, and others in the larger transportation network.

Eleven regional workshops are scheduled. Many of them have already been held. We are co-sponsoring those with the Federal Highway Administration, the Environmental Protection Agency, the Surface Transportation Policy Project, Trust for Historic Preservation, Scenic America, and the Bicycle Federation of America.

I might say we expect about 4,000 people will have attended those regional workshops by their conclusion. They have shown a great deal of interest in the subject and, indeed, as Mr. Kane said, demonstrate that ISTEA has brought many members of the public who were not formerly in the transportation picture to the table, in a sense, in things like rails-to-trails, development of greenways, preservation of historic structures, etc.

Indian reservation roads are included in ISTEA on those roads that are open to the public or that provide access to Indian reservation or Indian trust lands. The IRR system includes 49,000 miles of public roads, and approximately 21,000 of those 49,000 miles are Bureau-owned roads.

That program was increased by ISTEA, which provides funds for planning, design, construction, and improvement of those roads.

In addition, ISTEA funded tribal transportation planning, authorized money for the funding of that, establishment of a scenic byways program, a bridge replacement program, and the establishment of LTAP centers for training of Indian tribes in transportation-related programs.

In cooperation with FHWA, the Bureau is hosting four regional meetings for tribes and Alaska Native villages on the implementation of ISTEA during the months of March through June.

As was previously indicated, money is distributed through 12 area offices on an allocation formula basis.

With respect to the Bureau of Land Management, ISTEA made several changes that now bring BLM into the picture by allowing them to nominate projects through local officials for funding under various provisions of the act. BLM is participating by coordinating through State surface transportation programs on scenic and back-

country byways, recreational and interpretive projects related to public roads, and recreational trails.

BLM has been actively pursuing implementation of ISTEA, and is participating on the Advisory Committee for Scenic Byways, and is working with FHWA on the establishment of important highways that provide access to BLM land and resources.

On a local basis, there is coordination with State Departments of Transportation to ensure that BLM roads are included in planning for transportation networks.

Fish and Wildlife Service is not currently included in ISTEA, but is working with the Federal Highway Administration and the Administration on possible inclusion of national wildlife refuges in the Federal lands highway program. That will provide public access to refuges consistent with other Federal lands.

That concludes the introductory statement, Mr. Chairman. We would be happy to answer any questions you should have.

Mr. RAHALL. Mr. Montrey?

Mr. MONTREY. Thank you, Mr. Chairman.

I appreciate the opportunity to represent the Department of Agriculture and discuss implementation of ISTEA.

If I may, I would like to abbreviate the written testimony that has been provided to the subcommittee for the record and concentrate my remarks on the actions that have been taken within the Forest Service to support implementation of ISTEA, the Forest Service being, by far, the main player in the Department of Agriculture in implementing the act.

First of all, we in the Forest Service have developed a national strategy entitled, "Capturing Opportunities with Forest Service Partners to Support Implementation of the Act on National Forest System Lands."

The cornerstone of that strategy is early and continuing participation in the State-wide and metropolitan planning requirements of ISTEA. And we are also encouraging our rural community neighbors and we are—as I am sure members of the subcommittee are aware—intimately involved in rural communities across the country. Through those neighbors and State foresters and State land management agencies, we are encouraging and promoting involvement on their part.

Our strategy also involves active participation in several other ISTEA programs, and I'll discuss actions we have taken in six program areas—five included in title one, and one under the Symms National Recreation Trails Fund Act.

Under the public lands highway program, forest highways are addressed. They have been an integral part of highway law since 1916. They are the main access roads to and through the national forests under the jurisdiction of and maintained by public authority, and they complement our administrative and road network in the Forest Service.

They are essential to us to provide access for public use and commodity haul, and are identified using prescribed criteria in consultation with State and local agencies.

Funding for this program by the act has been key to our maintaining the value of our current infrastructure investments, and are critical to providing necessary improvements to maintain struc-

tures that protect water quality, wetlands, and adjust road capacities to keep air pollution to a minimum.

The annual authorization of approximately \$112 million for forest highways is approximately twice the annual appropriation for the 1987 Highway Act, and will continue to help us address what remains as a significant inventory of projects in the forest highway program.

The second program to which we have contributed action supporting implementation of ISTEA is related to highway timber bridge research. ISTEA authorized a research program for timber highway bridges. Because of the Forest Service's experience in structural wood research and technology transfer and the existence of an ongoing Forest Service timber bridge demonstration project, the Federal Highway Administration sought Forest Service input and assistance to implement a cooperative research program for utilization of wood in transportation structures.

In the forest products laboratory, which is one of our nine research institutions in the Forest Service and is located in Madison, Wisconsin, was selected by the Federal Highway Administration as the institution to conduct the timber bridge research program.

Among other things, it has resulted in the publication of a timber bridge manual to aid professionals in design, construction, inspection, and maintenance of timber bridges.

Related to scenic byways, which is the third program in which we have contributed to implementation of ISTEA, the national forest scenic byways program was initiated to offer recreational motorists a showcase of outstanding scenic beauty and changing forest landscapes.

We currently have 115 scenic byways, and they focus on road corridors that contain scenic vistas and the facilities for enjoying them. These designated byway corridors contain outstanding aesthetic and cultural values and offer many opportunities for motorists.

We have continued to add to that list of 115. Before the week is out, we may have 116 or 117.

ISTEA also provides for establishing a National Scenic Byways Advisory Committee, and we are represented on that committee by Associate Chief George Leonard.

I include in the written testimony several examples of scenic byway projects but, as I said, I will abbreviate and not go into all those.

The fourth program that we have contributed to implementation of ISTEA is transportation enhancements. For us, that is one of the most exciting provisions of ISTEA. It is exciting to us because it helps ensure highway programs to be more environmentally sensitive in keeping with our land stewardship mission.

ISTEA requires 10 percent of the surface transportation program be expended on areas that enhance the environment, such as wetland; mitigate damage to fish and wildlife habitat; preserve historic sites; contribute to meeting visual quality standards; develop a wide range of bicycle and pedestrian uses, and enhance highway beautification. In the written testimony, I include several examples of demonstration projects which we have implemented with cooperation of other partners.

The next program area, I will comment on, our implementation actions are actions related to the Symms National Recreation Trails Fund Act, which is provided for in section 1301 of ISTEA and funded for the first time in 1993.

Many States are still in the process of establishing guidelines and soliciting for projects, and other States that already had these guidelines have selected projects on National Forest system lands—and we include some examples of a couple of projects that we have implemented under this program area—with an emphasis on maintenance and reconstruction of existing trails.

Finally, related to rural economic development, we focus our community assistance efforts on enhancing the ability of rural communities to compete and thrive in changes occurring in their economic conditions. ISTEA language directs States to involve local officials, including those in rural areas, in the State-wide planning process, and to address rural economic development issues through ISTEA authorities.

One concern that we picked up in our involvement with communities has been with the two-year time frame in which States are required to have completed their State-wide plans, and whether for some communities that allows enough time for those communities to provide full input into the State-wide planning process.

We have addressed that leveraging, to some degree, off of our relationships with rural communities across the country to help sponsor and conduct a series of workshops aimed at informing and motivating local officials from those communities to increase their awareness and, we hope, make them more effective in participating in the processes to multiply the States.

So, in closing, and abbreviating my written testimony submitted for the record, the many provisions of ISTEA offer all land management agencies—and certainly the Forest Service—great and enhanced flexibility to address surface transportation issues. We are actively working in partnership with Federal, State, and local agencies in rural and urban communities to realize the benefits that are laid out by the legislation, and will continue to play an active role in the implementation of the act.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, gentlemen, for your testimony.

Let me begin by asking a general question about the enhancement program. And I note, Mr. Montrey, that you, in particular, touched upon some of the enhancement projects that have benefitted the national forest system.

In the way the law is written, is it possible for a Federal agency to submit an application to a State for an enhancement project?

For example, Mr. Galvin, say the New River Gorge National River in West Virginia was interested in pursuing enhancement funds, could Joe Kennedy down there go to the State and apply directly for such funds?

Mr. GALVIN. I think that is possible. In fact, several elements of the act are principally State programs. Scenic byways, for instance, the way we see that is principally a State program in which the Park Service would participate to complete a network of scenic byways. I don't believe there is any prohibition in the act in those

provisions that would keep the Park Service from going through the States to apply.

Mr. RAHALL. Mr. Kane, do you wish to comment on that?

Mr. KANE. One issue has to do with matching and the inability to use Federal funds to match Federal funds. So I think there would have to be some kind of cooperative arrangement through the States to handle the matching arrangements with other parties.

Mr. MONTREY. Correct. I might add, Mr. Chairman, within the Forest Service we do have a number of projects which would be implemented except for that matching fund requirement and the non-existence to date of the 20 percent matching funds.

Mr. KANE. I think, in general, there is just tremendous competition for the funds, and matching is an issue not only with regard to the Federal, but with a lot of the local agencies, as well, who are looking at trying to have enhancement projects. It is part of the competition that a number of States have set up in some cases to see who comes up with a larger share as a way to prioritize or rank the distribution of enhancement funds within a State.

Mr. RAHALL. Did you want to comment?

Mr. EDICK. Oftentimes a State is unable to participate with their own monies on a Federally-owned facility or project.

Mr. RAHALL. Let me ask you: could a private entity provide the match?

Mr. KANE. Yes.

Mr. RAHALL. It could be?

Mr. KANE. Yes. Generally, if the funds flow through the State. This has been an issue in the past with regard to the use of private funds as match. Congress, in title 23, allowed the value of donated private lands to count towards match. But what generally happens when private money comes into a project, whether it is enhancement or a road interchange, it must lower the total cost of a project, and then there is still a match that has to take place.

A number of States have set up mechanisms whereby private funds flow to the State, and then they become a State resource, which ends up as a match for the Federal money.

But the issue of private matching of Federal money—not just for enhancements, but for road projects, in general—has been one that has been debated over the years. I know this committee has taken it up in the past.

Mr. RAHALL. Thank you, gentlemen.

Mr. Kane, you noted that many States are having difficulty in implementing the enhancements program. I am under the impression that some State DOTs basically don't think it is worth their time.

In other words, some of the type of projects that can be funded in the program go far beyond the traditional road-building mentality that some State DOTs have—especially in the rural areas.

Under current law, is there any way for a State DOT to simply pass responsibility for the program to another State agency such as one with more expertise in the area of recreation or historic preservation?

Mr. KANE. I think the major reason, Mr. Chairman, for lack of obligating the money goes back to a point I made in my short state-

ment with regard to the overall obligation ceiling that the States had. When you only have about 80 percent obligation ceiling versus the authorizations, it is very difficult in assessing priorities and deciding where to use that obligation ceiling. It is a new program. There are lots of new players and lots of new partners.

Another major reason, though, is just the time it takes to set up new processes. Most of the States are setting up very good committees that bring in the historic interests, the bicycle interests, pedestrian interests, archaeological interests, etc., as a way to screen a lot of the applications and judge priorities.

We understand that there is going to be a lot more programming of enhancement projects later this year.

I think the reluctance was due to the fact that it was limited obligation authority.

You are right that a number of States have taken this much more enthusiastically and used it as an opportunity to bring in a lot of new partners. Some have not embraced it as well as others.

But when you have a very limiting amount of obligation authority to use, what States tended to do in ISTEA was put it on what they had as their higher priorities—obligating interstate maintenance funding, obligating National Highway System funds, obligating bridge funds.

Mr. RAHALL. I am still not clear on the answer to the question, whether the money has to go to that State DOT, or if it can go from you on to another State agency.

Mr. KANE. Through the State DOT. It is a set-aside of the Surface Transportation Program funds, themselves, which go directly through the State.

Now, States have partnerships—

Mr. RAHALL. And you need another agency?

Mr. KANE. Pardon me?

Mr. RAHALL. So that you can then go on to another agency?

Mr. KANE. Jointly administering them it could, but the direct flow is through the State.

Mr. RAHALL. All right.

Mr. KANE. Again, the issue of obligation ceiling would have to come into play, as well, where the program, itself, is being run by an overall ceiling across all programs, not just enhancement.

Mr. RAHALL. Okay.

Mr. Galvin, I did not get a clear sense from your testimony that the BLM has benefited from the Federal lands highway program. Are roads being built on BLM lands under this program?

Mr. GALVIN. I'll let Mr. Moeller answer that question, Mr. Rahall.

Mr. RAHALL. Fine.

Mr. MOELLER. In direct response to your question, no, at this time there are no new roads being constructed under this program.

What we are doing is working with Federal highways and working with the States to identify designation of roads that could form a network of roads to provide access to the BLM lands. This could include Bureau lands, as well as county and State roadways. But that system is currently in the process of being developed.

Mr. RAHALL. Mr. Galvin, you stated an important improvement to the Federal lands highway program would be to include the na-

tional wildlife refuge system as an eligible area. The definition of public lands highway in the law includes any highway through unappropriated or unreserved public lands.

Is it because lands which constitute the national wildlife refuge system are basically reserved public lands that these areas are not eligible?

Mr. GALVIN. I think I'll have Mr. Grannemann answer that question, if I may, Mr. Chairman.

Mr. RAHALL. Sure.

Mr. GRANNEMANN. Yes, sir.

The Fish and Wildlife Service has not participated in the act at all except on a local basis. At this point in time, I cannot give you a direct answer to that question.

It is my assumption that we have not participated in that program primarily due to our lack of understanding that that's an available option for us.

Mr. RAHALL. Can you research the answer to this and provide it for the record?

Mr. GRANNEMANN. Yes, sir.

Mr. RAHALL. Thank you.

[The information received follows:]

National Wildlife Refuges are not currently eligible for inclusion in the Federal lands highway program because the definitions and authorizations in the Federal highway laws (23 U.S.C. 101 and 204), including "reserved public lands" to which you referred, are not applicable to refuge lands.

While all lands owned by the Federal government can generically be termed "public lands", that term as used in law is generally applicable only to lands controlled by the Bureau of Land Management. This is also the case here, as the law in both section 101 (definitions) and section 204 (Federal Lands Highways) provides for roads in National Parks, National Forests, public lands (accompanied by specific references to the Bureau of Land Management), and Indian reservations.

While some National Wildlife Refuges were reserved or withdrawn from the public domain, the majority of those outside of Alaska were acquired by purchase, or transfer from other agencies such as the Department of Defense. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) classified all lands managed by the Secretary of the Interior for wildlife purposes (including wildlife refuges, game ranges, and various other designations) as the "National Wildlife Refuge System". As a result, the "National Wildlife System" is a singular category of lands, just as are national parks and national forests.

Inclusion of National Wildlife Refuge roads in the Federal Lands Highways program can be accomplished by inserting "National Wildlife Refuge System lands" in the appropriate places in sections 101 and 204 of the Act. We would be pleased to work with the staff on this should you so desire.

Mr. RAHALL. Mr. Montrey, you mentioned that the hold harmless provision of the law tends to cause some States not to submit public land projects. I guess I would ask you and Mr. Kane if you could elaborate a little bit further on this point.

Mr. KANE. The apportionments take into account whether you got discretionary public lands money the previous year, and so, in fact, a couple—I believe it is 2 of the 3 percent States—that is, those States that have more than 3 percent of their lands as public lands, which is a criterion that the Congress has said should be a priority consideration for using the public lands discretionary money—did not request any because if you did get discretionary grants under that program, in the subsequent year you'd get a smaller apportionment of your regular Federal aid because of the hold harmless provision. So it is a disincentive for States receiving discretionary money.

Kind of related to that is something I had mentioned also on scenic byways. It falls under another provision on minimum allocation. Almost all of the minimum allocation States didn't request scenic byways money because they then would have gotten less minimum allocation funds.

Mr. RAHALL. Mr. Montrey?

Mr. MONTREY. That is a quite eloquent explanation from my colleague, Mr. Chairman. I couldn't add to it.

Mr. RAHALL. Okay.

Mr. MONTREY. Except I might add one implication. For a land management agency like us, there is not a match between projects which are funded and the projects that are high priority for us as a land management agency. Sometimes the projects that are highest priority for us don't end up being the ones that go forward.

Mr. RAHALL. Right.

Mr. MONTREY. But that is a parochial concern, sir.

Mr. RAHALL. The gentleman from Wisconsin, Mr. Petri?

Mr. PETRI. Thank you, gentlemen, for your testimony.

I have a few questions I may submit for written response, but I had one question I thought I might ask here at this time of Mr. Edick.

In your testimony, you indicate that the Administration's 1994 budget calls for a 22 percent increase in Federal lands highway spending over ISTEA authorizations. Now, ISTEA increased funding for this program over authorizations in the 1987 bill. Could you lay out for us the thinking behind this substantial increase in spending?

Mr. EDICK. The majority of these Federal lands highways that we have been referring to are Federally-owned; that is, they are a Federal responsibility.

The backlog of needs—the maintenance needs existing—are such that, for instance, in the national parkway system there are \$1.6 billion just in maintenance needs alone. Currently, the system is 34 to 35 percent in poor or failed condition.

Moving onto the Indian reservation road system—BIA owned—of 20 to 21,000 miles, estimates of need amount to \$4 billion to bring them up to their design requirements.

In the forest highway program, as an example, there are \$3 billion in needs—and we are now speaking to the forest highway traffic, and primarily recreation traffic, wanting to access national forests. That estimated need of Federal responsibility is \$3 billion.

The systems of roads are deteriorating even with the increased ISTEA funds. ISTEA, while substantially increasing funding over the 1987 authorizations—by about 90 percent—is still not at the level it was in the initial program under the 1982 Surface Transportation Act where we had \$300 million for the four categories at that time.

So what we are proposing to do is to maintain and hold the system as it currently is and marginally work off the backlog of deficient maintenance requirements.

This 22 percent, or \$577 million, would be the increased authorization level over the remaining four years of ISTEA authorization.

Mr. PETRI. Do you decide where to allocate your scarce funds on the same basis that State highway departments do, by counts and

various other cost/benefit assessments? Or is there some other basis on which you—

Mr. EDICK. There are several ways that Federal lands highway allocations are handled. It depends on the category of funds. Since 1982, the Surface Transportation Act requires funds to be allocated based on relative need, transportation importance to access and manage the various Federal lands and their resources.

We have worked out various formulas based on these needs—including mileage, road conditions, the amount of traffic, and a range of resource factors. Again, it would depend on the category of Federal lands and class of roads.

We require administrative, regulatory, created formulas both in the Indian road program and the forest highway program. The park road program is also based on relative need, but this is determined by the National Park Service's priorities. In all cases, it is decided in cooperation with the involved Federal agencies.

And, in the case of the Indian road programs, the amount of money that is available is allocated by formula by the Bureau of Indian Affairs. For example, the BIA cooperates with the tribal government, set the priorities and establish a program of projects within their limited amount of attributed funds. It is a cooperative effort in all cases, and approved by the Federal Highway Administration.

Mr. RAHALL. The gentleman from California, Mr. Kim?

Mr. KIM. Yes.

I have one question to Mr. Kane. I have a serious concern about the formula that you worked out.

In California there is growing dissatisfaction with the formula that you have worked out allocating all of this recreational trails funding. I believe that greater emphasis should be given to land area and population. I'm not sure that has ever been considered.

Would you like to comment on that?

Mr. KANE. The way the trails funds are distributed to the States are 50 percent equally to all States, and 50 percent based upon the estimate of off-road recreational fuel use—an area in which we are currently undergoing a more comprehensive study, along with Treasury, to really come down with a firm estimate on that use.

We have been working with information that our Highway Statistics Office collects, as well as State taxation agencies, because, by and large, the majority of States also have fuel taxes on off-highway vehicles. We have been working with the State revenue agencies, as well as the Internal Revenue Service, and some private consultants, to better estimate that off-highway fuel use.

But the formula itself is 50 percent to all States, and 50 percent based on off-highway fuel use. To get the program going we used the best estimates we could, and we will be refining it further. If there is any input that perhaps California would like to give us that we haven't heard to date, we are certainly open to that and would like to hear it.

Mr. RAHALL. Let me ask a couple more questions.

Mr. Montrey, you noted the timber bridge research program in your testimony. As you know, ISTEA established a timber bridge construction program, as well, even though the Forest Service already had such a program.

Are you and Mr. Kane coordinating your timber bridge construction programs?

Mr. MONTREY. Yes. Absolutely.

Mr. KANE. Yes.

Mr. RAHALL. Is that a yes from both of you?

Mr. KANE. That's a yes.

Mr. RAHALL. When we were in conference with the Senate on ISTEIA, while I served as a member of that conference from the Public Works Committee, on behalf of the Interior Committee—now the Natural Resources Committee—I sought to change the proposed recreational trust program to make it more sensitive to the needs of Federal land management agencies. Unfortunately, we were not successful in that endeavor and the Senator from Idaho got his way.

Today, I would appreciate hearing from this panel whether you think the trails program as it is currently written is conducive to the types of trail needs in the BLM and the Forest Service and the National Park system.

Mr. GALVIN. Thus far, we have not had a lot of involvement with the trails program. To some degree, that's because of some of the reasons that Mr. Kane indicated. Putting together the advisory groups, etc., has limited its implementation.

With respect to trails, we think the transportation planning sections of the act really provide more opportunity to include trails, bicycle paths, rail-to-trail conversions, as part of transportation networks, than the particular provisions of the trail sections you are talking about.

We continue to see that as an opportunity to expand trail opportunities. But with respect to public lands, I believe the initiative in that program is very largely given to the States. So with respect to trails in national parks, we would not see the program having a great deal of impact.

We would coordinate with trails outside of national parks as part of our technical assistance duties.

Mr. RAHALL. BLM?

Mr. MOELLER. I think my comments pretty much would mirror what Mr. Galvin said.

On the BLM, we do have significant needs as far as trail funding and coordination with other agencies, other entities. We see the principal opportunities for working through the State transportation network planning activities.

I think we also heard mentioned that we do have an advisory committee that is looking at all of these issues. One of the primary purposes of that advisory committee is to take a look within a given State at how the program is working, how it is working with the other Federal agencies, and the utilization of the \$7.5 million this year and \$15 million next year has to be consistent with the State outdoor recreation plans that tie in all of these activities.

So I would say in the affirmative, yes, for right now it seems to be working. It is something that we will learn more about as we go on. It is really our first year of that effort, and right now it is handled with about half a dozen State DOTs. The rest are Departments of Natural Resources that we deal with.

As the advisory committee meets, they will be looking at that issue and others, and I think we'll know more about that. The act does call for us to make a recommendation and report back to Congress after four years, and we will clearly be doing that.

Mr. MONTREY. For the Forest Service, Mr. Chairman, it is a very comfortable fit. We see it as an opportunity to get some additional funds to the ground to our trails program to the Forest Service through the States.

As you probably know, we manage in excess of 120,000 miles of recreational trails, and our reconstruction and maintenance backlog is formidable. So we see nothing but good for us and for the resources for managers.

Mr. RAHALL. Mr. Kane, an issue that has been raised repeatedly with regard to the Indian reservation roads program is the lack of communication between the BIA, the FHWA, and the tribes. It may be that the BIA and FHWA are communicating, but tribes feel that they are not being permitted to participate in their own programs.

Could you comment on that, because it is a—

Mr. KANE. I'll refer that one to someone who deals day-to-day on that program.

Mr. EDICK. We certainly don't deny that there is a communication need—a need to get more information from the BIA on this program to the tribal governments.

This year, as was pointed out in Mr. Kane's statement, we have held two regional meetings to date. We have two planned, and, in addition, the Transportation Research Board is holding a special meeting in Montana. The remaining two meetings—one in Alaska and one in Portland, Oregon. The one last week was in Minneapolis, Minnesota. The first was in Albuquerque, New Mexico.

These are regional meetings and, of course, the tribal governments have to travel some distance in some cases, but they have been well attended. It is a full three-day program to show the tribal governments how they can better interface with the program and be a greater partner in this process.

I perhaps ought to defer to the BIA. I think Congressman Richardson was correct. We do have only two people dedicated to this program. They work with the BIA, and in turn the BIA has the lead responsibility to interface with the tribal governments under their own institutional arrangements.

Mr. RAHALL. Yes?

Mr. GEIGER. I'm Dick Geiger from the BIA.

I certainly would like to state that our cooperation and coordination with Federal Highways has been excellent since 1982 when the Surface Transportation Act brought the Indian reservation road program under highway trust funds.

As Tom mentioned, we are co-sponsoring these meetings around the country. In addition to that, I personally have attended a number of area meetings and have invited tribes and Federal highway officials to the meetings.

I think it depends upon the area of the country. It also depends upon how the States react to the invitations.

We have seen some States where they are not very well in attendance at our meetings. In other States they are well attended.

In these four meetings that we are putting on, we are specifically inviting all Federal agencies involved in the region, all States involved in the region, and, of course, all tribal leaders.

As Tom mentioned, in Albuquerque we had over 300 attend that meeting, with good representation from tribal leaders.

In Minneapolis we had over 150 attend.

So I think these type of meetings go a long way to break down the communication barriers between the tribes, the States, and the Federal agencies.

Mr. RAHALL. There have been some suggestions from tribal leaders and others that tribes that are eligible for self-governance status be allowed to manage their own transportation programs in much the same way as the States do. Those tribes would very much like to deal directly with FHWA.

Do you foresee this as an option for these tribes?

Mr. GEIGER. Under current title 23, I don't believe that is an option. The way title 23 is set up—which is the statute where we are getting the highway trust funds from the Federal Highway Administration—I don't believe that is an option. It is very similar to the way the States deal with counties.

Now, this is not bad, in my opinion. We have got a number of tribes that are working under 638 contracts. We have also got a number of tribes that are self-governance compacts, and that is working fairly well.

I know we will hear from the Hoopa Tribe. That is one of the self-governance compacts. I can point to a tribe in Oklahoma that has got a 638 contract to manage the program, and it is working quite well.

So, again, it depends upon that area, the States, and so on.

Mr. RAHALL. Let me ask you a couple more questions, Mr. Geiger.

A number of tribes—perhaps all—have had problems with the implementation of the 2 percent planning set-aside. Their major concern has been that the Bureau's interpretation of this provision has not permitted them to develop their own transportation plans in accordance with the provisions of the Indian Self-Determination and Education Assistance Act.

Can you respond to this complaint?

Mr. GEIGER. As ISTEA states, up to 2 percent of these funds could be available for planning under Public Law 93-638. Now, what we did was we sent out guidelines last year to all the tribes and asked for comments. We sent a letter to all the tribes, and we got back probably 40 to 50 comments. After reviewing all those comments, we put out another set of guidelines.

Last year was not a good year because, number one, we got the funds, as you know, December 18th. By the time we got the funds out to the areas, we only had about six months left in the year. So it was a start-up year.

A number of tribes did apply for the 2 percent planning funds. I think we are hearing from some of the tribes where it didn't work out very well.

Again, what we did was, after consultation with Federal Highways, put the funds down at the area level, because we felt that was the best place for these funds.

In some cases, the area offices basically decided to give each one of the tribes their fair share. In other words, an area got half a million dollars, or whatever, so they just divided it up among all the tribes. Of course, for some of the smaller tribes, that wasn't very much money.

So, of course, when you don't have much money, there isn't much a tribe can do, so some of the tribes elected not to apply for those funds.

We had actually set up deliverables in this requirement, and we suggested to the areas that they manage those funds the best way they saw fit.

In other words, for a small tribe, they need to look at what the transportation needs are over the period of the reauthorization bill and not necessarily fund that tribe each year out of the 2 percent planning—to look at it as a one-shot deal during the reauthorization—for the smaller tribes.

For the larger tribes, of course, there would be enough funds available for them to get money each year. But we hoped that we had flexibility in those guidelines.

I would say, unfortunately, some of the areas interpreted the guidelines a little stricter than we really intended. At these regional meetings we are again stressing the fact that there should be more flexibility in the use of these 2 percent planning funds. But it is limited to 2 percent.

Mr. RAHALL. The tribes are also concerned about the relative allocation formula. Certain tribes, for example, received significantly less than they did under the old formula. Others seemed to have a problem with the phase-in period.

To what extent were these tribes involved in the development of this formula and the decision to phase it in—the overall allocation formula?

Mr. GEIGER. As was pointed out by Mr. Edick, the fund distribution formula is based on what is written up in title 23, which specifically says it should be based on relative need.

About six years ago, we started the process of developing a new formula, realizing that we needed input from the tribes. We held public hearings around the country in all of the area offices. Some of these public meetings were well attended; others were not.

So we received input from the tribes on a proposed formula through that process, and then we went and ran a number of different schemes as to how this formula would work. In other words, we put in different factors—factors that were based on more relative need rather than land area.

The old formula was based on land area, population, and miles of road, and it was felt that was not really a representation of relative need.

What we finally came up with was a formula that is based on vehicle miles traveled, population, and cost to improve.

After running a number of scenarios on this, it was distributed again to the area offices and the tribes. We sent it out by registered mail to all 520 tribes and again asked for input into the formula. We received probably about 70 to 75 comments.

After analyzing all of those comments, we then went back and developed basically the formula that we are implementing now.

After getting concurrence from the area offices and the Federal Highway Administration, the Commissioner signed off on the new formula on January 12, 1993.

We also had a committee review the phase-in of the new formula. The recommendation of the committee was that it be phased in over a period of four years, with the first year using three-fourths of the old formula and one-fourth of the new formula, and so on. By the fourth year the new formula would be fully phased in.

As far as some tribes getting less, this formula does not distribute the funds to the tribes. This formula distributes the funds to the 12 area offices.

We have not required the area offices to use the same formula to distribute funds to the tribes. In other words, the area office can use it—and we recommend they do—but it is not a mandated requirement.

The other thing that we realize is that a major factor in this new formula is how good your road inventory data is. We have discovered over the past several years that some of that data is not really up to snuff.

What we have done there is put together a process allowing and encouraging the areas to get their data updated and get it into the data bases of use in the formula. We have been encouraging that for a number of years, and some of the areas have done a fairly good job, some of the areas have not done as well as they should have.

But I think the fact is now that they realize that this is a major factor in the formula. That effort will be increasing at the area level.

Mr. RAHALL. Last question. What percentage of the funds available for the Indian reservations program is deducted for administrative costs?

Mr. GEIGER. Under the Interior Appropriations Act, the BIA can use up to 6 percent for administration. That's for BIA.

For the Federal Highway Administration, they can go up to 3.75 percent, but I don't believe they have ever actually used that high of a percent. And the BIA has not used the full 6 percent, either. We have never used the full 6 percent, but we are allowed to go up to 6 percent. That's in the Interior appropriations language.

Mr. RAHALL. All right.

Thank you, gentlemen.

[Subsequent to the hearing, a list of questions was prepared and sent to the FHWA.]

Mr. RAHALL. Our next panel is composed of: Mr. Dale Risling, Chairman, Hoopa Valley Indian Tribe, Hoopa, California; Mr. John Steele, the Tribal Chairman of the Oglala Sioux, Pine Ridge, south Dakota; Ms. Marge Anderson, Chief Executive of the Mille Lacs Band of Ojibwe, Onamia, Minnesota; Ms. Andrea Smith, Regional Coordinator, Affiliated Tribes of Northwest Indians, on behalf of the National Congress of American Indians; and Ms. Faith Roessel, the Executive Director, Navajo Nation, Washington, D.C., office.

Ladies and gentlemen, we welcome you to the subcommittee this morning. As previously stated, we do have copies of your written testimony. They will be made a part of the record. You are encouraged to summarize.

You may proceed in whatever order you desire.
Mr. Risling, do you want to go first?

TESTIMONY OF JUAN ARMAND, COUNCILMAN, HOOPA VALLEY INDIAN TRIBE, ON BEHALF OF DALE RISLING, CHAIRMAN, HOOPA VALLEY INDIAN TRIBE, HOOPA, CA; JOHN STEELE, TRIBAL CHAIRMAN, OGLALA SIOUX, PINE RIDGE, SD; MARGE ANDERSON, CHIEF EXECUTIVE, MILLE LACS BAND OF OJIBWE, ONAMIA, MN, ACCOMPANIED BY KAREN EKSTROM, ASSISTANT COMMISSIONER OF ADMINISTRATION FOR THE MILLE LACS BAND OF OJIBWE; ANDREA SMITH, REGIONAL COORDINATOR, AFFILIATED TRIBES OF NORTHWEST INDIANS ON BEHALF OF NATIONAL CONGRESS OF AMERICAN INDIANS; AND FAITH ROESSEL, EXECUTIVE DIRECTOR, NAVAJO NATION, WASHINGTON, DC, OFFICE

Mr. ARMAND. Good morning, Mr. Chairman.

Due to circumstances beyond Chairman Risling's control, he is unable to attend today's committee hearing. My name is Juan Armand. I'll be representing the Hoopa Valley Tribe today. I am an elected councilman for the Hoopa Valley Tribe of Northern California.

We certainly appreciate the committee's willingness to hold oversight hearings on the implementation of the ISTEA authorization.

I will briefly summarize our presentation, as our written testimony and support documents have been submitted for the hearing record.

The Hoopa Valley Tribe, responsible for the management of 90,000 acres on the reservation, is committed to the direct control and administration of our tribal operations and development.

We were one of the first tribes in America to negotiate a compact of self-governance and an annual funding agreement with the United States beginning in fiscal year 1991.

As background, American Indian tribes are probably the most regulated, manipulated, and dominated peoples in America. The Indian Self-Determination Act of 1975 was passed to allow tribes to contract from the bureaucracy and provide direct services to their people.

The bureaucracy, instead of diminishing, grew larger and more intrusive in our tribal affairs under this act.

The Indian Self-Determination Act amendments of 1988, enacted as public law 100-472, included a title three self-governance determination project. The determination project allowed tribes to negotiate and transfer programs, services, functions, and activities from the Bureau of Indian Affairs to the tribe.

The tribe is authorized to prioritize, allocate, and manage these resources with limited Federal involvement.

In 1991, we notified the BIA of our interest in negotiating the transfer of the Indian reservation roads program into our self-governance annual funding agreement. Even though the authorizing law clearly allowed the transfer of all BIA programs at all levels, the BIA questioned the legality in transferring roads.

The provisions of public law 102-184, the Tribal Self-Governance Determination Project Act, in 1992 specifically referenced BIA roads as eligible for negotiated transfer. But, as you will see, it

takes more than an act of Congress to get the BIA to do the right thing.

The Hoopa Tribe has demonstrated that we have the internal capability to design, engineer, and construct roads on our reservation. Based on our experience, while complying with all Federal road construction specifications, we estimate that we can reduce the BIA's two- to three-year design and construction time frame to 14 months under self-governance.

Our two years of negotiation on BIA roads was completed last July, and we agreed then to finance start-up and engineering costs for selected roads until our annual funding agreement was amended.

After eight months, our tribe has spent approximately \$190,000 on engineering services, and at least \$50,000 on meetings and travel expenses, and we have yet to sign a final agreement for funds transfer.

The BIA has repeatedly raised new objections to our further demands each time we come close to agreement. Our final plans, which we have submitted to the BIA, are also submitted for the committee record.

We have refuted every BIA question as to our capability to perform under ISTEA and comply with Federal road construction specifications and standards.

We have also submitted for the record comparative photographs of roads built by the BIA and tribally-constructed roads that documented that the BIA holds the tribe to higher standards than its own contractors.

Other problems our tribe has experienced include the BIA Sacramento area office manipulation of road maintenance funds designated for the extensive Hoopa road system being diverted to other tribes for other purposes.

And just recently, after almost three years of negotiations to take over BIA roads and all associated activities, we learned that the BIA, through an indefinite quantity contract, plans to let a contract to do transportation planning for the Hoopa Reservation. This represents bureaucratic bungling or spite.

We recommend that Congress amend the ISTEA legislation to:

One, revise the memorandum of agreement between the BIA and the Federal Highway Administration to clearly outline tribal participation and streamline the process to establish certification and acceptance status;

Two, allow tribes, under self-governance, to substitute tribal procurement procedures to replace Federal acquisition regulations to further advance the demonstration project;

Three, direct the BIA and Federal Highway Administration to assist tribes assume management over the Indian reservation roads program.

Four, hold the BIA more accountable in implementing the Indian reservation road program in allowing direct tribal contracting.

Five, require the Department of Transportation to ensure that State governments fully inform tribal governments of their eligibility for ISTEA safety program funds for local governments.

Six, prevent the BIA from awarding indefinite quantity contracts for services a tribe wishes to contract and manage itself.

Seven, authorize the tribal self-governance determination project with the Transportation Department's Federal Highway Administration for direct tribal negotiated transfer of roads planning, engineering, and construction under the established legislative principles.

In conclusion, we urge this committee in amending or clarifying the ISTEA that it be made perfectly clear to the managing bureaucracies—whether the BIA or the Federal Highway Administration—that Congress intends for tribes to participate in meaningful ways in implementing the act, including direct management of all aspects of road construction.

With that, I conclude.

I thank you.

Mr. RAHALL. Thank you, Mr. Armand.

Before proceeding with the remainder of the panel, the Chair recognizes the gentleman from California, Mr. Hamburg.

Mr. HAMBURG. Thank you, Mr. Chairman.

Mr. Armand, I just want to say that I am sorry that I was a few minutes late and didn't hear the beginning of your testimony, but I was very glad to have the opportunity to meet with you recently in my office.

I share your concerns. I believe that when this legislation passed there was built into it a kind of flexibility that would take into account the kinds of concerns that you have raised. And I want you to know that as a member of this subcommittee and as a member of the full committee that I intend to work with you on these concerns that you have raised today.

From the photographic essay which you showed me, I think that you have well demonstrated the problems that continue to occur with road construction on the Hoopa Reservation. You have certainly demonstrated to me some very good reason for your concerns.

So I welcome you to this subcommittee. Thank you for your testimony. I look forward to working with you.

Mr. ARMAND. Thank you, sir.

Mr. HAMBURG. Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Hamburg.

Mr. Steele?

Mr. STEELE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is John Steele. I am the President of the Oglala Sioux Tribe from the Pine Ridge Indian Reservation. It is with great pleasure that I do address you on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

As my written testimony will disclose, there are two basic problems with the implementation of ISTEA. First, we have not benefited, as I believe Congress intended, from the opportunity to undertake our own planning, our own designing, construction, operation, and maintenance of the highway and road system on the Pine Ridge Indian Reservation.

Clearly, it was intended in section 1032 that Indian reservation road plannings would be provided from an allocation of 2 percent of all Indian road construction funds to the respective tribes. This percentage is probably inadequate for meaningful planning.

Second, the allocation of funds to the Pine Ridge Indian Reservation, which is located in the Aberdeen Area of the Bureau of Indian Affairs, will significantly reduce the amounts of funding that we had expected from ISTEA.

Under the relative needs formula, which is a new formula that they are implementing over the next four years, the Aberdeen area will receive 5.519 percent of the available funds for Indian highways. Under the old formula, Aberdeen received 9.523 percent of the available funds for highway construction. Therefore, the increase in funds provided by Congress through ISTEA to the Pine Ridge Indian Reservation will be severely constricted.

By the old allocation formula, we would have expected \$4.4 million between 1993 and 1997. With the relative needs formula, we will receive no more than \$2.5 million by 1997.

The membership of the Oglala Sioux Tribe is highly energetic and seeks employment opportunities. Unfortunately, these opportunities do not exist within the Pine Ridge Indian Reservation except as a part of the functioning of the tribal government and the development of infrastructure.

The opportunity to farm and ranch is not available to the average tribal member. There are no metropolitan areas within close proximity of the Pine Ridge Indian Reservation that otherwise might provide job opportunities.

During the past two decades, the 1990 census has reported unemployment on the Pine Ridge Reservation at the highest in the Nation, and the per capita as the lowest by county.

The loss of additional job opportunities due to the reallocation formula based upon relative needs will be devastating to the membership of the Oglala Sioux Tribe.

I must respectfully petition that the subcommittee provide oversight to the allocation of funds authorized under ISTEA. As described in my written testimony, there is considerable need on the Pine Ridge Indian Reservation for good transportation routes.

Good highways will permit the tribal membership to travel back and forth to job opportunities they previously did not have. Moreover, good highways will promote tourism within the Pine Ridge Indian Reservation, which should create jobs and income within reservation boundaries.

The Oglala Sioux Tribe is turning the corner toward progress. In 1988, Congress authorized the development of the \$65 million of the Oglala water supply system, which will bring safe and adequate drinking water to our membership. It is a tragedy that at the close of the 20th century the infrastructure of the Pine Ridge Indian Reservation does not meet reasonable standards for public health.

We are part of one of the riches nations on this planet, but living conditions of our tribal membership is no better than Europe during the Middle Ages.

Through our own planning, our public involvement, and design efforts, we are bringing this rural water supply system project to a reality.

In the area of highways, Mr. Chairman, our membership has been employed in the completion of a major construction project between two communities of Porcupine and Shape's Corner on our

reservation. It is an all-tribal work force. The tribe is doing the job. We have completed the project admirably, and we did a quality segment of road ten miles in length. This encourages us that we can rebuild our entire road system with our own forces.

Although the per capita income levels have been the lowest in the Nation on the Pine Ridge Indian Reservation on the past two censuses, the cost of electrical energy on Pine Ridge Indian Reservation is the highest in South Dakota.

The Oglala Sioux Tribe has undertaken efforts to obtain an allocation of Federal hydropower that will bring significantly lower-cost energy onto the reservation. As part of this effort, we are seeking to have employment and decision-making capabilities within the local rural electrical cooperatives and public utilities that distribute electricity within the reservation.

As the three examples set forth above demonstrate—highways, water supply, and electricity—the development of the infrastructure of the Pine Ridge Indian Reservation is not only a source of improvement in the quality of life; it is also a source of employment. Because employment opportunities are so limited, our tribal membership works intensely and is dependable when jobs become available.

I sincerely appreciate the time you and members of the committee have taken to review this matter, and I thank you for the original ISTEA bill, but I petition you to work with us in order that we can benefit more from the provisions of ISTEA as intended by authorizing the subcommittee to assist us in the oversight of the allocation of the funds.

Mr. Chairman, I did hear one of the former committee members tell the panel that there is a deficit or a backlog in road maintenance both within the Federal highway system and on Indian reservations, and that \$4 billion was needed on Indian reservations just to bring up to par the existing road systems, and that this money was being used to address that.

If the BIA is doing this, they don't want tribal involvement, and we didn't have it. On Pine Ridge we didn't yet get the 2 percent planning monies. We put in for them last year, and we put in for them again this year.

Thank you very much, Mr. Chairman and subcommittee members.

Mr. RAHALL. The Chair recognizes the gentleman from California.

Mr. HAMBURG. Thank you, Mr. Chairman.

If I might, I know this may be somewhat unusual, but could I go back to Mr. Armand for just one moment?

Mr. RAHALL. Sure.

Mr. HAMBURG. There are a couple of things that I think we would like to get into the record regarding the Hoopa tribal experience, and if I could just direct a couple of questions, I will do so.

Mr. Armand, you discussed in your testimony some of the frustration that the tribe has had in securing the tribal self-governing annual funding agreement for transferring the IRRP planning, engineering, and road construction funds to tribal control. I wonder if you could just briefly explain for the record, from the perspective of the Hoopa, why these problems exist.

Mr. ARMAND. Well, prior to the Hoopa Tribe withdrawing our share of funds from the Northern California Agency, our budgets were subject to being diverted or redistributed to other Indian tribes by means of the IPS system.

Being as brief as I can, in a nutshell what happened is Hoopa holds 90 percent of tribal roads on our reservation. So, therefore, the largest amount of funding should be allocated to the Hoopa Valley Reservation for maintenance and construction of those roads.

As a result, other Indian tribes were not receiving benefits, so, since Hoopa is a resource tribe, Hoopa naturally bore the cost. When it was time to pass on allocations, it came from Hoopa, so Hoopa subsidized.

Mr. HAMBURG. Because Hoopa has approximately 90 percent of the roads under the control of the BIA agency, you, in fact, feel that you are subsidizing the agency, itself?

Mr. ARMAND. Yes, sir.

Mr. HAMBURG. Just another quick question.

Do you believe that the Hoopa Tribe is fully capable of managing the Indian reservation roads program?

Mr. ARMAND. Absolutely.

Mr. HAMBURG. Can you comply with all the Federal specifications and requirements?

Mr. ARMAND. Absolutely, sir. We, as a matter of fact, welcome scrutiny because we believe that being totally open and providing the best set of plans and documentation in the long run benefits the Hoopa people to the greater extent because we are going to absolutely build better roads than are currently or in the past have been built in Hoopa.

For us, we are judged every day by our tribal membership on the service that we provide to them. And we will also be judged over the long haul by the maintenance of the roads and the cost that it will incur.

Therefore, we feel that to do the best job in-house will benefit the Hoopa people and the people that pass through our reservation.

As of this date, laying on this table we have finished plans. We are absolutely ready to go to work right now. But, as we stated in our testimony, we are waiting for bureaucracy to grind its way through and pass on the necessary funding and things that are needed to get underway.

Mr. HAMBURG. An those plans have now passed apparently from the State of California and are back here in Washington?

Mr. ARMAND. Yes, sir.

Mr. HAMBURG. And you are just waiting for your final okay?

Mr. ARMAND. Yes, sir.

Mr. HAMBURG. And how long have you been waiting for that?

Mr. ARMAND. We have been waiting approximately eight months.

Mr. HAMBURG. Eight months? Do you know what is holding it up?

Mr. ARMAND. As near as I can tell, it is bureaucratic finger-pointing. We have several agencies that have some portion of authorization, and each, in turn, waits on the other. Everyone has opportunity to control the purse strings, but nobody wants to step up and take authority to sign the documents to get us underway.

Mr. HAMBURG. Mr. Armand, just briefly, on the self-governance demonstration project that you speak so highly of, could you just briefly state how that project has affected tribal government on the Hoopa Reservation?

Mr. ARMAND. It has given us a flexibility to design and implement, thus producing service to the Hoopa people in shorter time frames, with less bureaucratic decision-making.

For example, we have been without medical facilities on reservation. Through the implementation of the self-governance project, we are now going to bring on-line a trauma care center so that on our reservation there is going to be immediate medical facilities for immediate trauma needs. That's just one project under self-governance. There are many more.

Mr. HAMBURG. And just one final question.

You suggested that the Hoopa Tribe's procurement regulations might replace the Federal acquisition regulations, themselves. Could you just state briefly how that would work?

Mr. ARMAND. We believe that, first of all, we have no qualms with the concept of FAR. But, again, it is another regulation that is regulated by others than tribal government.

We believe that if we have the in-house ability that is on a par with FAR or exceeds PAR's regulations, then tribes ought to have that ability to implement within their own governmental structure those regulations.

Mr. HAMBURG. That sounds eminently reasonable.

Anything else you would like to add before I lose the floor here a second time?

Mr. ARMAND. I would just like to add that in our efforts to become more technically equipped within our tribal governmental structure, we are absolutely putting every effort to meet every requirement so that the Hoopa people and Indian Country, in general, are elevated to the highest position of concern and consideration—that people view Indian Country as absolutely having ability to think of, to create, and to implement these projects in-house on our reservations, thereby giving direct control to Indian Country over Indian lands.

Thank you.

Mr. HAMBURG. Thank you very much.

From what I saw of the photographs you showed me, we can certainly do a lot better than we have done in the past. The way the system has been working has been inadequate.

I hope that, using the ISTEA legislation and some of these changes you have talked about, we can turn more of this authority over to you and build some better roads.

Mr. ARMAND. Yes. Absolutely.

Mr. HAMBURG. Thank you very much.

Thank you, Mr. Chairman. I appreciate it.

Mr. RAHALL. Yes.

Ms. Anderson?

Ms. ANDERSON. Good morning, Mr. Chairman.

My name is Marge Anderson. I am the Chief Executive of the Mille Lacs Band of Ojibwe Indians, and we are located in east-central Minnesota.

I am honored to appear before this committee to tell you about our perspective of the Indian reservation roads program.

Thanks to your personal commitment, Mr. Chairman, that fund was nearly tripled, and tribes are being truly treated as governments under the act. On behalf of the Mille Lacs Band of Ojibwe, we thank you.

As this committee knows, increased funding is not enough to improve some programs. This oversight hearing is the first step to make sure that the ISTEA is being implemented. Thanks to the economic development from our casinos, our reservation—\$16 million in reservation construction is now underway. We were the first tribe in the nation to issue tax-exempt bonds to finance infrastructure improvement. As a result, ten roads are being constructed on the Mille Lacs Reservation, and almost every road is in need of improvement.

With all of our construction, the key problem of ISTEA has been with our band has been communications with the BIA and States. Therefore, the band has four key recommendations to make to this committee to implement.

One, Congress should direct the Secretary of Interior to charge the BIA with establishing a team in the central office to communicate with all Federally-recognized Indian tribes about ISTEA.

The biggest problem for the band is the lack of communications from the Bureau of Indian Affairs.

The band only became fully aware of all the ISTEA provisions two weeks ago in preparation for this hearing. The State just notified us about scenic byways funding. When we tried to apply for funds, we were told we were too late.

While we must assume responsibility for communicating, we would appreciate earlier notices from the State and the Bureau of Indian Affairs. If the States are not responsible for informing tribes of their funding eligibility under ISTEA from State flow-through dollars, then perhaps the BIA could organize a team to compile a package of information on the ISTEA and send it to each Federally-recognized Indian tribe. Certainly, most tribes nation-wide are yet unaware of assistance which they could receive.

Number two, Congress should direct the Secretary of Interior to charge the Bureau with communicating better with tribal governments with regard to BIA road plans for road construction on reservation.

The first simple task which the BIA could do is develop an elementary organizational chart where there would be an explanation of the responsibilities of all parties under ISTEA. It is critical that the BIA communicate better with tribes.

Because of the massive construction going on at Mille Lacs, we need to coordinate all of our projects. We would rather get our project information in writing in advance rather than over the phone at the last minute.

The BIA engineers whom we work with have been very helpful, and we appreciate their dedication and hard work. Perhaps because there are too few BIA engineers with too many projects, the tribe suffers from lack of information.

Number three, Congress should direct the Secretaries of the Departments of Interior and Transportation to immediately issue a

joint directive to all State governments telling them to comply with the act.

One of the provisions of the ISTEA provided that States must include tribes in State-wide road planning process. We were not included in State meetings until two months ago. As it turned out, the State has been using a BIA employee as a spokesperson for all tribes in our State.

Speaking for the Mille Lacs Band, we would much prefer to represent ourselves at Minnesota Department of Transportation planning meetings, as the act calls for. The BIA does not speak for our tribal government.

If Minnesota had invited us to their meeting earlier, perhaps we could have influenced completion of expansion of a State highway through our reservation, rather than it stopping ten miles south of us.

Congress should ensure that all States are carrying out the provision of the act which mandates that States include Indian tribal governments in planning.

Number four, explaining the self-governance administration project to include direct ISTEA funding to tribes, bypassing the BIA.

In 1988, the Mille Lacs Band was one of the first ten tribes selected to participate in a self-governance demonstration project. The project was authorized after a Senate study concluded that only \$0.14 of each \$1 appropriated for Indian tribes ever reached the reservations.

We are in the fifth year of the project, which allows us to contract with the Department of Interior to administer certain BIA programs ourselves. In other words, the Band gets its share of administrative funds previously expended by the BIA, and uses those funds for direct services.

The project is being expanded to include other departments of the Federal Government, and I propose that this committee explore further expanding this project to allow tribes to contract directly with the Department of Transportation. We could eliminate the BIA as a middle man for those tribes who wish to be independent so that ISTEA funds could more efficiently be utilized for direct construction of roads.

In conclusion, Mr. Chairman, Indian tribes have had the capability of building roads since the 1960s. In the 1970s, the era of self-determination officially began. In the 1980s, the Mille Lacs Band pioneered self-governance demonstration project. It is our goal in the 1990s to become economically self-sufficient.

Revenues from gaming are allowing us to do that. But before our dream of a private sector economy can become a reality, we need a solid infrastructure. In order for our tribe and others to benefit from this act, we simply must ask for better communications among the Federal, State, and tribal governments. The best way to achieve this goal is to have Congress request from the Executive Branch that this communication happens, and make sure that States and the BIA are complying with this act.

On behalf of the Mille Lacs Band of Ojibwe, I thank you for inviting me to testify before you today.

Thank you.

Mr. RAHALL. Ms. Smith?

Ms. SMITH. Good morning, Mr. Chairman.

Thank you for your leadership in listening to the tribes today. It is also very interesting how, in coming together, all the tribes seem to have the same consistent problems.

As stated, my name is Andrea Smith, and I am the Regional Coordinator for the Affiliated Tribes of Northwest Indians, and I am a member of the Macah Tribe. We have joined forces today with the National Congress of American Indians to present testimony on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

Like NCAI, the Affiliated Tribes of Northwest Indians is a council of tribal governments, and ATNI represents 43 tribes in Oregon, Washington, Idaho, and western Montana.

I am a project consultant to one of the four Native American LTAP centers, and I also sit on the Subcommittee for Low-Volume Roads on the Transportation Research Board. I am also responsible for the identification, facilitation, and mobilization of resources for the development of Indian communities in the northwest, and tribal transportation has been a priority for my office.

One of the critical issues facing tribes is sovereignty and the nature of the relationship between the Federal Highway Administration and Indian tribes. This understanding is important for a successful implementation of tribal transportation systems.

The government-to-government relationship has been ignored and misunderstood in that the FHWA and BIA have a memorandum of agreement that does not include the tribes. Without understanding of this government-to-government relationship, successful implementation of ISTEA in Indian Country has been hindered. Local input is critically needed to realistically assess the transportation needs of Indian reservations.

We identified them as follows:

One of the most critical needs is for the tribes to develop their capacity to design and implement their own transportation systems. The four Native American LTAP centers, whose primary role is technology transfer, has found there is no local tribal staff to transfer this technology to.

The BIA has always been responsible for the planning, design, and construction of Indian reservation roads. As currently defined in the January, 1993, Federal Register, the 2 percent planning funds available to Indian tribes may not be used to establish tribal transportation programs, but only be used to perform planning activities for specific projects.

Number two: the new relative needs formula the BIA currently utilizes has been extremely unfair to the northwest tribes and has not allowed adequate funds for planning. This formula is not based on scientific data and should be revised.

The Portland area office was the only area with less than 100 percent increase from 1991 to 1992, and this is a specific example of how the formula is deficient when you consider the fact that the Portland area office has the largest number of independent tribal governments to serve and over 7,000 reservation miles to cover.

Number three: the 2 percent level of planning funds is not a realistic level for planning. The funds allocated for planning in the

Portland area budget is only \$300,000. Because planning and engineering development can easily run from \$100,000 to \$300,000 on a major road construction, this would probably only cover three tribes in our area. So we don't know what the other 43 tribes are going to do for planning in fiscal year 1993.

Number four: we also found that States are not consulting with the tribes. We think this is critical.

Currently, State Departments of Transportation are the principal funding conduit for the Federal funds. We need a well-defined process so that local governments cooperate to put together efficient road systems so that tribes can work with States and counties to have an efficient system, which is what I understand that the ISTEA legislation was really geared for.

The current planning process for tribes to access ISTEA funds is cumbersome. I think we need to refine that, because we are having to jump through three bureaucratic hoops, and it doesn't provide opportunity for the tribes to link with the States—which, again, is important for local efficiency.

Therefore, we strongly suggest changes in the Intermodal Surface Transportation Act of 1991, and these suggestions include:

One, that the Subcommittee on Surface Transportation provide oversight and then closely monitor whether there has been proper implementation of transportation programs and systems on Indian reservations. They may include: A, whether tribes had the opportunity to participate in the current future planning, and this should include the analysis and update of inventory, and also classification of reservation road systems. We are not sure how the Bureau is classifying the roads, and they seem to change from area to area, which makes the formula all the more confusing.

As stated by my other counterparts, the relative needs formula for appropriating funds to reservations needs to be looked at to see if it is consistent or equitable for tribes.

B, whether the 2 percent planning funds have been properly offered to the tribes in a manner that involves the tribes and helps them build capacity to build their transportation systems.

Number two, remove the 2 percent planning fund ceiling and amend section 1032 to include intermodal transportation planning. This would be consistent with the method that States use their Federal aid planning and research funds, and should eliminate that the 2 percent planning funds be tied to specific projects.

Current regulations also prevent any long-range planning or cooperation with the States on their State transportation improvement programs and regional programs. We feel that by increasing the 2 percent, it would improve the quality of local transportation decisions for maximal and prudent utilization of scarce public resources.

Third, tribes should have access to appropriate funding to cover the administration costs for transportation programs. This would bring us up to parity with other State and Federal governments.

We believe, and therefore recommend, that the development of State, tribal, and local relationships should be a working objective for the four Native American LTAP centers. These partnerships would have broad-reaching benefits for financially strapped tribal and rural governments.

Our last suggestion would be to permit tribes within a State boundary to associate with each other to form a Native American Regional Planning Organization. This would assist the tribes in developing their own transportation improvement programs, to enable them to negotiate with the State and local units of government to matters relating to highway and other modes of transportation, and it would permit the use of a portion of Indian reservation roads planning funds to establish and maintain such an organization.

I thank you for your time and consideration, and I applaud the leadership of the committee in inviting us to testify here today.

Thank you.

Mr. RAHALL. Ms. Roessel.

Ms. ROESSEL. Thank you, Mr. Chairman and members of the subcommittee.

I appreciate the opportunity to represent the Navajo Nation. President Peterson Zah expresses his apologies for not being here himself, but wishes to thank the subcommittee for their leadership in implementing ISTEA.

The Navajo Nation two years ago was actively involved in seeing this act through, and we have been very supportive of the purposes of trying to improve infrastructure in Indian Country.

The testimony you have before you lists several items of the positive features of ISTEA. What I would like to focus on are some of the problems that we have experienced.

As far as the relative needs formula, the Navajo Nation is supportive of that formula. The problem we have is that the four-year phase-in period is detrimental for our Navajo area because we stand to lose over a four-year period \$13 million.

It was expressed earlier by the—I think it was Mr. Geiger from the BIA—that was done at the recommendation of the committee. I'm not sure what he was referring to. And it appears that it was not done with any consultation with Indian tribes. So that is something that we would very much like to see implemented immediately—the relative needs formula.

Secondly, ISTEA provides for consultation with States, and this has been expressed by other members of this panel. What I would like to add is that the Navajo Nation has had some overtures from the local counties in terms of inviting us to participate on the regional planning committees. But what we have found is that the Navajo representatives are basically being outvoted in terms of when they try to bring up their own projects for consideration.

What we would propose is that the Navajo Nation and other tribal governments have the ability to deal directly with the States, rather than being vetoed by the local, regional planning commissions that are established.

We think this would be a positive attribute, not only in terms of making sure our needs are directly met, but by virtue of the status of Indian tribal governments.

Another concern that we have is Indian tribal governments are not able to designate their own scenic byways, and this is something very important for the Navajo Nation. When we have a country that is beautiful in terms of having Canyon DeChelley Chaco, Chaco Canyon National Monument, our own Monument Valley Tribal Park, we feel it is absolutely imperative that we have the

ability to designate scenic byways, and that it not be just with the States, themselves.

Also, we are very concerned that the BIA, who has the authority to establish rural technical assistance centers, has not taken leadership to do so under the authorization from ISTEA. For Navajo, again, this is very important in terms of trying to promote tourism on our lands. These rural technical assistance centers do very specifically say that tourism is an item that can be included.

Also, Mr. Chairman, I would like to raise the issue of the problems we have had dealing with public law 638 contracts through the BIA in terms of the Navajo Nation taking on the responsibilities that the BIA has through ISTEA authorization.

In particular, we have seen great delay in terms of our ability to get our 2 percent planning funding. There has been seven months of trying to negotiate that contract.

We also have had problems in terms of the Navajo Nation wanting to take on responsibility such as doing the environmental surveys, but being rejected by the BIA, who gives that work to the Army Corps of Engineers.

So there is a real, far-reaching problem in terms of the Bureau really abiding by this law when a tribe wants to assume that responsibility.

What is happening at Navajo area is that the best interests of the Federal Government are taken into account, and not the best interests of the tribal government.

Also, finally, we have a real concern with maintenance. The Congress is making enormous investment in Indian roads on the reservation. Yet, one problem—a major problem we are going to be seeing, and already are seeing—is maintenance of these roads.

It is very clear in the act that the Bureau is to ask for the appropriations. It is very clearly stated in the act, but they are not doing so, so we are very concerned about maintenance of roads.

I would also like to raise the issue, finally, of bridge replacement and rehabilitation. For the Navajo Nation, in fiscal year 1993 we were able to construct a bridge that cost around \$700,000, and we are very concerned about being able to compete—because the money does go through the State—with all the other tribes in a State for an allocation. We think this is something where we would recommend there needs to be a revisit of that provision so that tribes will have an opportunity to do rehabilitation of bridges.

Finally, I would like to introduce two members of the Navajo Nation's Transportation and Community Development Committee of the Navajo Nation Council, Mr. Sampson Begay and Mr. Richard Begay, Jr. The Navajo Nation, as you know, has a tripartite government, and we do have the Legislative Branch represented here, and I wanted to make sure they were recognized.

We have a rather detailed statement, and I just wanted to highlight, for purposes of the committee's interest, the provisions I have just stated.

Thank you very much, Mr. Chairman and members of the committee.

Mr. RAHALL. Thank you all very much for your testimony.

I want to give you a chance before I recognize the gentleman from Minnesota, just so you can think of this while Mr. Oberstar

is speaking. I want to give each of you a chance to respond to what you heard earlier from the Bureau of Indian Affairs agency. To his credit, and for the record, Mr. Geiger is still here listening to your testimony. So I want to give you that chance in just a moment.

Before that, I will recognize the very fine, distinguished chairman of our Subcommittee on Aviation, the gentleman from Minnesota, Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman. I appreciate the opportunity to participate briefly in the subcommittee deliberations.

I want to welcome the panel particularly, and especially my good friend, Marge Anderson, who is the Chief Executive Officer of the Mille Lacs Band in Central Minnesota.

There is an extraordinary success story at Mille Lacs, which has developed a very highly successful gaming parlor and has wisely, after extensive debate among the enrolled members of the Mille Lacs Band, backed Chairwoman Anderson's proposal for a long-term investment program.

They floated a bond issue, the cost of which is to be repaid from the proceeds from the Grand Casino gaming operations. They have set their priorities, investing in a medical facility clinic; a new school, which is desperately needed on the reservation; in a long-term economic development program; in housing; and in a road construction program.

Believe me, those needs are critical because they are needs that have been unfunded—in some cases, neglected—for so many years by the BIA, or because there simply wasn't enough money to go around.

The Indian Self-Reliance Act of 1975, which is one of the first bills I voted on when I came to Congress, directs the Federal Government to support self-reliance as a goal in all of the Indian reservations throughout the country. Mille Lacs is really doing something.

The self-determination program is meaningless if you don't have the money to carry it out. Gaming has, for the first time, given Indian reservations the wherewithal to make the investments needed to achieve that objective. This wise and responsible, long-term investment program being carried out in Mille Lacs is a model, I think, for the whole country.

The staff that Chairwoman Anderson has established at Mille Lacs in the highway program is also a model—a staff, if I recall rightly, of 15 people—who are unparalleled anywhere else in the country. But they can't do this job alone. The recommendations set forth in Chairwoman Anderson's testimony are—the three points I think are critical not only in Mille Lacs, but elsewhere around the country, to achieving better coordination with the State, the highway departments, and better coordination with the Bureau of Indian Affairs, to achieve the goals of this legislation.

It is unforgivable that information should not be transmitted to local agencies about their entitlement to funding and availability of Federal programs. You can't expect people who are not experts in highway legislation to know these things.

So the States have to do a better job of communicating, and the two Departments—Transportation and Interior—need to set up a coordinating mechanism.

Mr. Chairman, I would urge you to encourage the two to do that. Several years ago, when I chaired the Investigations and Oversight Subcommittee, we found that \$800 million was being spent on transportation by the Department of Health and Human Services—and they weren't talking to DOT at all about what they were doing in that Department in outreach programs to rural areas.

The result of that was we pushed the two—Mr. Clinger and I, at the time—pushed the two Departments to set up a coordinating council so they would talk to each other and then talk to the local transportation agencies in rural and urban areas. That council began to work to produce results.

The same kind of model ought to be set up between Interior and DOT so that information about these programs gets to those whom we intended it should benefit.

This committee can take great pride—and I think Ms. Anderson's testimony rightly points it out—that we substantially increased Federal funding to highway programs on Indian reservations, and I am proud to have been an author of that legislation—or that piece of it—and improved the coordination. But the delivery mechanism is still lacking.

The wisdom of these oversight hearings is that you are uncovering the shortcomings in the delivery, and through your leadership, Mr. Chairman, coming from an area that knows hardship and knows how help and partnership with the Federal Government can make lives better for people, you understand what we are talking about here, and I salute you for that effort. You really approach it with deep genuineness of spirit and determination to have results. And this is one of the things that we need a result on.

Thank you very much for the opportunity to be here.

Mr. RAHALL. The Chair thanks the gentleman from Minnesota.

Does anybody on the panel wish to respond to anything you heard from the earlier panel?

Ms. ANDERSON. Mr. Chairman, I've got with me the Assistant Commissioner of Administration. She chairs our Public Works Commission of the Mille Lacs Reservation, and she wants to say a few words.

Mr. RAHALL. Okay.

As I did note, while she is coming forward, Mr. Geiger, from the Bureau of Indian Affairs, is still with us in attendance.

Would you identify yourself, please, for the record—your full name and title.

Ms. EKSTROM. Thank you.

My name is Karen Ekstrom, that's E-K-S-T-R-O-M. I am the Assistant Commissioner of Administration for the Mille Lacs Band of Ojibwe.

I'd like to leave with you some pictures of the road construction that is going on at the reservation right now for you and your staff. If that is all right, I will leave that with Ms. Reinhart after the meeting is over.

Mr. RAHALL. Sure.

Ms. EKSTROM. I would also like to point out that earlier a member of this committee asked Congressman Richardson whether the States are including the tribes in the State-wide planning meetings. I wish to enter into the record this letter dated April 2 from

the Minnesota Department of Transportation, which the tribe received on April 7.

As it reads in this letter, it is talking about the Enhancements Task Force. It reads, "The Enhancements Task Force, at its meeting on Thursday, April 1, passed a motion which provides that Indian tribes in Minnesota can directly propose projects."

This is saying that the State believes that this is an option to include the tribes, instead of something that is required by law, as it is supposed to be.

Also, receiving this letter on April 7, and the proposal for this was due on April 15, it did not give the reservation enough time to complete a proposal and submit it; therefore, we neglected to submit a proposal this year and we do have to wait until fall of 1993 to submit one.

I would also like to thank the BIA for conducting the regional planning meetings, which they have just started this past March of 1993. But I'd also point out that it is a year and a half after the act was enacted in 1991. So these four meetings that are coming up—which did happen in March and April, and one in May and one in June—we are happy and grateful for these meetings, but it is a year and a half after the fact. I'd just point that out.

Thank you.

Mr. RAHALL. Any other member may proceed.

Ms. SMITH. Thank you, Mr. Chairman. Andrea Smith from Affiliated Tribes of Northwest Indians.

I would also like to point out the fact that the Bureau has not conducted the regional meetings to get information out to the tribes. And I'd like to state for the record that I did submit a proposal to the Federal Highway Administration to put on a conference—it was last August—and was denied to sponsor a national conference around the country. Their comments were that it wasn't needed, it wasn't innovative, and we didn't have the right people on the agenda. So we have been really working hard trying to get all the tribes informed, both through the National Congress of American Indians and Affiliated Tribes of Northwest Indians.

I'd just like to state that for the record.

Mr. STEELE. Mr. Chairman, I do believe that the tribes need to have more direct planning with the different States. The BIA takes this responsibility unto themselves. They take the patterning of our roads, the priority-setting, and they do not include the tribes in their planning processes.

As an example, I was told directly by Aberdeen area that I did not need a five-mile east-west road because they said, "Your people go shopping in Rapid City and to the south of us in Gordon, Nebraska. You need north-south roads so those people can go shopping. You don't need east-west roads."

I have a reservation, Mr. Chairman, that is 50 miles wide and 90 miles long. If I am going to develop my infrastructure so that my economic development can grow in those communities, I need east-west roads. If I have a car dealership on the reservation—which I don't have at this time—or a furniture store, or any kind of local services any small town has, they are directing the dollar right off that reservation.

They have not given us the planning monies to date.

They eat up a lot of money within their own bureaucracy. We can do without that area office. They are protective of their own jobs.

This is my personal opinion.

Transportation is one of the last strongholds that the BIA has. They thought we would never get into it, and then ISTEA came along and we are interested and we want to develop the infrastructure on our reservations for the future.

This relative needs formula—they use half of that formula—the factors that were included in the last panel—is the cost of improvement. And I don't know if they have verified the actual cost of improvement from the different area offices. You look at them, and Aberdeen area's is way lower than the other places in the cost of improvement. This is a major factor in that relative needs formula that we disagree with that is taking a lot of money from our area.

Thank you, Mr. Chairman.

Mr. RAHALL. Ms. Roessel?

Ms. ROESSEL. Mr. Chairman, very briefly, earlier Mr. Geiger, I believe, in response to a question you asked in regard to the suggestion that tribes interested in self-governance could do so directly with the Federal Highway Administration, responded no, not under title 23.

I would like to take exception to that because, if anything, with the basis of public law, this Indian Self-Determination Act, 638, tribes are really going toward the avenue of self-determining on their own.

When you look at the self-governance tribes—Navajo is not one, but is interested—you are seeing the trend of more and more Federal activity being taken on by the tribes, themselves. And it is not just limited to the Interior Department.

I would say that, in terms of the upcoming years, there are going to be amendments that will be posed by tribal governments saying we should be extending governance beyond just the Interior Department.

So, if anything, I would really want to make sure that the committee is open to that possibility in terms of working with tribes very directly for this, because, if anything, there is a real problem with an intermediate layer.

I personally perceive the Federal Highway Administration as having the technical expertise, and we just can't get to it. We have an intermediary there that is really making it very difficult for us to get roads out into Indian Country. And so if we could have direct access to the Federal Highway Administration, to their technical expertise, I think that would go a long way to helping us overall.

Thank you.

Mr. RAHALL. Okay.

Mr. Armand?

Mr. ARMAND. Yes. Thank you, Mr. Chairman.

I have a myriad of questions, in particular for Mr. Geiger, but I will refrain from going through the laundry list and just concentrate on two of them.

Why are so few road construction projects included under self-governance when the law clearly authorizes such negotiated transfer and tribal direct management? Does the Bureau have philo-

sophical or administrative problems regarding the IRRP transfers under the self-governance demonstration project?

Number two: how soon do you expect the Hoopa Tribe's annual funding agreement amendment regarding IRRP to be approved?

Throughout these layers of bureaucracy, as I stated earlier in my testimony, we, as the Hoopa Tribe, are sitting at this table with plans ready to implement. But because of a single question brought up within the bureaucracy, it stops the whole project. We are ready to go to work. When does the finger-pointing stop from one agency to the other and those people entrusted with power to move this project, to streamline it, to produce service to Indian Country, get on with the jobs entrusted to them that life in Indian Country may become more productive to all of us?

With that, I thank you.

Mr. RAHALL. Mr. Armand, if you would submit those questions in writing, we'll see that the Bureau of Indian Affairs gets the questions and prepares response to you.

[Subsequent to the hearing, additional questions were prepared and forwarded by the Hoopa Valley Tribe to the FHWA and BIA. The questions and responses follow:]



U.S. Department
of Transportation

**Federal Highway
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

93 JUN 8 11 30 AM '93
June 8, 1993

The Honorable Nick J. Rahall, II, Chairman,
Subcommittee on Surface Transportation
United States House of Representatives
Washington, D.C. 20510

Dear Representative Rahall:

Thank you for your interest in the Indian Reservation Road (IRR) Program and for providing the opportunity for the Federal Highway Administration (FHWA) to respond to questions raised by the Hoopa Valley Tribe. Their questions and the FHWA's answers follow:

Question 1(a): The Hoopa Valley Tribe has testified to extensive difficulties with the BIA in negotiating the transfer of the Indian Reservation Roads Program planning, engineering, and construction funding into their Compact of Self-Governance Annual Funding Agreement. Given the persistent problems Tribes experience with the BIA bureaucracy, what is your reaction to extending the authorization of the Self-Governance Demonstration Project to the Federal Highway Administration for direct contracting with Tribes for road construction?

Answer: The extension of the Self-Governance Demonstration Project authorization to the FHWA would require the establishment of staff and procedures to handle direct contracting with Tribes for road construction. Over the past few years, the Bureau of Indian Affairs (BIA) has assigned staff and implemented formal Self-Governance procedures. The extension of Self-Governance to the FHWA would only duplicate the functions already being performed by the Bureau of Indian Affairs. If there are concerns with the existing process, we would recommend looking at ways to improve current BIA's procedures for direct contracting with Tribes on road construction.

Question 1(b): The Hoopa Tribe indicates that some States may not be fully informing Tribal governments that they are eligible to receive ISTEA Safety Program funds from the forty percent set-aside for local governments.

Question 1(b)(1): Can you document how many Indian Tribes directly receive Safety Program funds by State for the Committee?

Answer: The Section 402 Highway Safety Program requires that 40% of funds which are apportioned to the States under this provision are to be expended at the local government level. For the purposes of this funding, Indian Tribes are eligible for funding similar to local government entities. In addition, the BIA receives apportioned Section 402 funds (\$600,000 in FY 1993) for distribution to individual Indian Tribes. While we can document-- through the BIA-- which tribes have received Section 402 highway safety funds, we do not track direct State grants to tribes.

Question 1(b)(2): Does your Agency provide any oversight to ensure that Tribes are knowledgeable of their eligibility to receive these funds?

Answer: The FHWA, as well as the National Highway Traffic Safety Administration, provides Section 402 program information to all safety program directors on a routine basis, including information to the BIA Highway Safety Program Director. The BIA Highway Safety Program Director is headquartered in Albuquerque, New Mexico, and has contact with tribes related to their eligibility for Section 402 funding.

Question 1(b)(3): Do any States limit Safety Program funding to only subdivisions of the State?

Answer: States do not preclude the Indian Tribes from receiving Section 402 highway safety funds. However, all applicants for these funds have to submit specific proposals relating to their request for funding. Since funding is limited, decisions on eligibility are made on the State level and based on program priorities within the State. The Governor's Highway Safety Representative in each State can provide specific information.

Question 1(c): The Federal Highway Administration withholds a percentage of the Indian Reservation Roads Program monies for administration of the program. What percent was withheld this year and how much money does that represent? What duties does the Agency perform with this set-aside? Were all these set-aside funds expended on Indian Reservation Roads Program administration last fiscal year?

Answer:

Under Section 104(a), 23 U.S.C., the FHWA is authorized to deduct a sum not to exceed 3.75 percent of the funds authorized for the Federal-aid and Federal Lands Highway programs. In Fiscal year 1993, three percent (\$5,730,000) of the Indian Reservation Roads authorizations was deducted by the FHWA. This percentage is applied equally to specific Federal-aid and Federal Lands Highway programs authorized in the Intermodal Surface Transportation Efficiency Act of 1991.

The funds deducted cover the general operating expenses requirements provided in the Department of Transportation (DOT) Appropriation Acts and other enacted transportation legislation. The funds cover the FHWA's expenses associated with general program administration and stewardship of the IRR program, together with all other Federal-aid programs. It also covers the FHWA's technical assistance expenses including special training, research and development, technology transfer, and other related program activities.

The set-aside funds are combined with the amounts taken down from the other programs to cover expenses or projects listed in the conference reports of the annual fiscal year DOT appropriation acts.

Please advise us if we can provide further information on these matters.

Sincerely yours,



Anthony R. Kane
Associate Administrator for
Program Development



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN - 6 1993

Honorable Nick J. Rahall, II
Chairman, Subcommittee on Surface Transportation
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your May 13, 1993, letter requesting the Bureau of Indian Affairs (BIA) to respond to questions submitted by the Hoopa Valley Tribe, as a follow-up to the April 28, 1993, hearing on the Intermodal Surface Transportation Act of 1991.

Enclosed are answers to those questions directed to the BIA. We understand that the Federal Highway Administration will respond directly to you on those questions addressed to them. If you need further information, please advise.

Sincerely,

Ralph G. Hill, Jr.
Assistant Legislative Counsel

Enclosure

2. (a) **The Hoopa Valley Tribe has testified as to their extensive difficulties securing BIA approval of the transfer of Indian Reservation Road Program funds into the Annual Funding Agreement associated with their Compact of Self-Governance.**

Question: (1) **How many road construction projects are included in Tribal Self-Governance Annual Funding Agreements?**

Answer: The Hoopa Valley Tribe has included projects, by amendment, in their 1993 Funding Agreement. Nationwide, there have been about four tribes that have discussed including Road Construction projects in the Annual Funding Agreements. There were nine compacts that include provisions for Road Maintenance in FY 1993. It is expected that several additional tribes will include the Road program in compacts for FY 1994.

Question: (2) **Why are so few road construction projects included under Self-Governance when the law clearly authorizes such negotiated transfer and Tribal direct management? Does the Bureau have philosophical or administrative problems regarding IRRP transfers under the Self-Governance Demonstration Project?**

Answer: The Road Construction program is an effort that requires considerable knowledge of the National Standards and Specifications. The highway construction process is held to a national standard that provides both safety and overall construction uniformity. The Bureau of Indian Affairs (BIA) has been working with the Office of Self-Governance and the Federal Highway Administration (FHWA) under the Self-Governance concept. The Highway Trust Funds (HTF) are jointly administered funds for the Indian Reservation Roads (IRR) program between the FHWA and BIA. The IRR program, by law is administered under Title 23 U.S.C. Both the BIA and FHWA are pleased that the Self-Governance demonstration project can include Road Construction projects under amendments to the Annual Funding Agreement.

Question: (3) **How soon do you expect the Hoopa Tribe's Annual Funding Agreement amendment regarding IRRP to be approved?**

Answer: The Amendment regarding the IRR program for the Hoopa Valley Tribe has been prepared by the tribe and reviewed by the BIA. The Sacramento Area Office expects the amendment to be signed pending final agreement on the percentage of funds for indirect costs. The

BIA's Sacramento Area Office has already agreed to approve the amendments provided the tribe agrees to resolve and include contract supports costs at a later date pending an Inspector General's review.

- (b) **The Hoopa Valley Tribe has been attempting to negotiate the transfer of all IRRP funds associated with the tribe since 1991 and over the past eight months have accumulated \$190,000 in engineering services debts and \$50,000 in meeting expenses attempting to secure these road construction funds.**

Question: (1) Will the tribe be fully reimbursed for its expenditures on this initiative?

Answer: The tribe agreed to use tribal funds to prepare construction plans and specifications for a construction project at a July 10, 1992 meeting. Following the transfer of contract authority to the BIA on October 7, 1992, the tribe requested reimbursement for their efforts. Since there was no contract in place between the BIA and the tribe, we are not eligible to authorize reimbursement for work accomplished before the BIA had received contract authority or project approval from FHWA. The tribe will be reimbursed for expenditures incurred after October 7, 1992, for approved work.

Question: (2) Given the tribe's expressed desire to assume control of all road construction activities, how is it possible for the BIA to let an Indefinite Quantity Contract award for transportation planning on the Hoopa Reservation in the last month without giving the tribe first right to contract these monies?

Answer: The BIA has not awarded an Indefinite Quantity Contract (IQC) for transportation planning on the Hoopa Reservation in the last month. In fact, the BIA has discussed with the tribe several times the procedures for obtaining transportation planning funds so the tribe can do the work if they so wish.

Question: (3) Will the BIA stop this transportation planning contract for the Hoopa Reservation and turn these funds over to the tribe for direct management?

Answer: There has been no Indefinite Quantity Contract awarded for work on the Hoopa Reservation. There appears to be communication problems within the tribe on the transportation planning program. The transportation planning process and the method for applying for these funds have been shared with the tribe by BIA. The BIA is available to further discuss the tribe's proposal.

- (c) **There have been questions raised as to the BIA requiring higher standards of performance from the Hoopa Tribe than it does from its own road construction contractors. Is this true?**

If true, why?

If not true, are you aware that the Hoopa Tribe has submitted comparative photographs of BIA and tribal constructed roads on the reservation to visually show this management disparity?

Answer:

The BIA, by law, is required to meet the American Association of State Highway Transportation Officials (AASHTO) standards. The FHWA reviews all plans, estimates, and conducts a final inspection on each project to ensure that all standards are met. In some cases design exceptions are granted where right-of-way and other restrictions require such actions. The tribes are expected to meet the same design and safety standards set by FHWA. The photographs presented are based on conditions and standards where tribal restrictions and right-of-way clearances exist. However, based on information from the field office, the projects are designed and constructed in accordance with AASHTO standards except where right-of-way is limited.

- (d) **The Hoopa Tribe, due to its frustrations with the BIA, has recommended an amendment to ISTEA allowing for a direct tribal Self-Governance Demonstration Project relationship with the Federal Highway Administration.**

Question: **What is your reaction to this proposal?**

Answer:

The BIA and FHWA have been working with the tribe in an effort to implement a tribal Self-Governance Demonstration Project. These efforts have been difficult within the Self-Governance framework. We believe the BIA should be involved with negotiations which are co-managed with another Federal agency, or where its responsibilities are affected in any way. The U.S. Department of Transportation should be consulted on the specific questions dealing with direct contracts between the tribe and FHWA.

- (e) **The Hoopa Tribe has suggested that the Federal Acquisition Regulations applicable to road construction should be waived and replaced by the tribe's own procurement regulations.**

Question: What do you think of this proposal?

Answer: The possibility of using tribal procurement regulations has been discussed. This is a contracting issue and if the tribal procurement regulations meet the Federal Acquisition Regulations, they could be allowed, in my opinion.

- (f) Could you explain to this Committee how the BIA Road Maintenance funds for the Sacramento Area Office, Northern California Agency has reduced from approximately \$450,000 in Fiscal Year 1982 to \$130,000 in Fiscal Year 1988?

Question: Where did these funds get diverted? Does the Hoopa Tribe receive sufficient funds to adequately maintain their roads now?

Answer: In FY 1982, the Sacramento Area received \$667,000 for road maintenance. Based on Area funds distribution percentages, it appears that Northern California Agency received \$133,500 (20 percent of \$667,000) not \$450,000 as indicated by the tribe. In FY 1988, Northern California Agency received \$165,000 of which \$130,000 was included for the Hoopa Tribe. No funds were diverted at all. Moreover, from FY 1982 through 1988, road maintenance was on the Indian Priority System (IPS) and, therefore, the Agency tribes were establishing priorities of the program and funding needs for each program. Nationwide, the tribes are receiving about one-third of the need for road maintenance. The Hoopa Tribe has identified a similar need.

- (g) What percent of IRRP funds are provided directly to tribal governments under Self-Determination contracts? What efforts are being made by the BIA and what assistance is being given by the Federal Highway Administration to assist tribes to directly manage their road construction?

Answer: HTF Road Construction has only recently been included in self-governance negotiations because only a small number of tribes have expressed an interest in pursuing the program. The more popular program for Road Construction by tribes is the Self-Determination program under P.L. 93- 638. Of the \$181.0 million available for Road Construction in FY 1993 it is expected that approximately 30 percent of Road Construction will be contracted by tribes. During FY 1992, 25 percent, or approximately \$34.0 million, was contracted to tribes under

P.L. 93-638 contracts. Also, 43 percent of the program, or approximately \$58.0 million, was contracted to Buy Indian contractors for reservation roads

The BIA and FHWA continue to assist the tribes in the IRR program. Through the National and Regional meetings being conducted by the BIA and FHWA, tribal leaders are assisted in overall management processes. Each meeting includes a full discussion of ISTEA, contracting under P.L. 93-638, Self-Governance, planning, and Title 23 U.S.C. requirements, procurement procedures and related road program issues.

- (h) **Do California tribes receive an equitable share of the funds available under BIA road maintenance and IRRP?**

Answer:

California tribes receive the same percentage share as all other tribes that qualify for Road Maintenance funding. As is widely known, the BIA road system is funded at about one-third of actual Road Maintenance needs. It is hoped that additional maintenance funding would be provided in the future to help maintain roads being built with the increased HTF under the Road Construction program.

Mr. ARMAND. Thank you.

Mr. RAHALL. At this point, I did have a number of other questions, but I think I will forego asking them and instead make a recommendation—or actually make a direction at this point.

I think we have heard fairly enough from this panel that there are some substantial changes that need to be made in the way the Federal Government deals with sovereign tribal nations in the transportation area.

As such, I will ask that staff, in consultation with this panel, in consultation with the minority, and in consultation with other interested parties, begin drafting possible remedial legislation.

At some time we may—it is hard to predict at this point—have some vehicle to move forward that we can provide these needed changes. I think, in any case, we ought to be prepared to move forward.

I hope we all can get together and draft these proposed recommendations for changing the law.

I'd be glad to recognize the gentleman from Wisconsin, Mr. Petri, at this point.

Mr. PETRI. Thank you all for your testimony. You really touched on this, but I just wanted to give you one last chance to expand on it if you wanted to.

I think you all indicated that there is probably a need for more information dissemination to different tribes about the funding opportunities that have been opened up by the ISTEA legislation. Do you have some more specific suggestions as to the best way to get that information to those who need it?

Ms. SMITH. I'd like to respond to that.

The Affiliated Tribes of Northwest Indians is teaming next week, of course, with the Transportation Research Board. It is going to be a national conference, national transportation summit. That will provide a forum for all the tribes to come and compare their notes and hopefully develop consensus to some immediate- and long-term solutions to the problems.

We look forward to the dialogue next week, and feel that we are going to have some good input with the technical assistance of Transportation Research Board.

And then I would also look to motivating the Native American LTAP centers to provide aggressive forums for tribes to come together and learn more about the transportation needs and how they can come into the loop.

My feeling is it is going to be a long learning process.

Mr. RAHALL. Thank you very much.

Mr. STEELE. Thank you, Mr. Chairman. We look forward to working with your staff on this.

Ms. EKSTROM. I'd like to say that even though Mr. Oberstar has left, I would like to thank him for his kind words.

Mr. RAHALL. He is right behind you.

Ms. EKSTROM. Okay. Thank you.

Mr. RAHALL. Our next panel is composed of Ms. Patrice Cox, ISTEA Liaison, California Parks and Recreation Society, Inc.; Ms. Elizabeth Merritt, Associate General Counsel, National Trust for Historic Preservation; Mr. Hal Hiemstra, Vice President for National Policy, Rails-To-Trails Conservancy; and Mr. William C.

Wilkinson, the Executive Director of the Bicycle Federation of America, accompanied by Mr. Andy Clarke, Project Manager.

Mr. RAHALL. Ladies and gentlemen, we welcome you to the subcommittee.

As previously stated, we have your prepared testimonies and they will be made part of the record as if actually read, and you are encouraged to testify.

You may proceed in whichever order you desire.

TESTIMONY OF PATRICE COX, ISTEALIAISON, CALIFORNIA PARKS AND RECREATION SOCIETY, INC.; ELIZABETH MERRITT, ASSOCIATE GENERAL COUNSEL, NATIONAL TRUST FOR HISTORIC PRESERVATION; HAL HIEMSTRA, VICE PRESIDENT FOR NATIONAL POLICY, RAILS-TO-TRAILS CONSERVANCY; WILLIAM C. WILKINSON, EXECUTIVE DIRECTOR, BICYCLE FEDERATION OF AMERICA, ACCOMPANIED BY ANDY CLARKE, PROJECT MANAGER

Ms. COX. Good afternoon.

My name is Patrice Cox. I am a representative of the California Parks and Recreation Society. The Society is a professional organization for individuals working in the park, recreation, and community service area.

It is a privilege for us to be here to speak to this committee today.

I have been a professional in the field of parks and recreation for about 20 years. I am a member of the legislative team. For the last ten months, I have been sitting on CALTRANS State task force for the transportation activities component of ISTEALIAISON, where we have been developing the guidelines and criteria for the program.

There are five areas that I would like to address today.

The first one deals with the transportation enhancement activities portion of ISTEALIAISON. This program is being strongly supported by park and recreation professionals within California.

The program has started a little slow. At this point in time, the guidelines and criteria have been developed, and the first round of applications were just due April 1.

I cannot comment on the success of the program since the applications have not been evaluated and awarded at this point in time, but I'd like to say that we will be keeping a close eye on the projects that are selected, and would encourage you to do the same thing.

We are hoping that pedestrian and bicycle facilities and scenic easements rate high within the successful grants, and that projects that are compatible with the environment are selected, which we feel is the intent of the program.

We are concerned and wonder if this will happen. The task force developing the guidelines and criteria for the program was comprised of mostly CALTRANS individuals and individuals from the regional transportation planning agencies.

There were only three representatives besides individuals with CALTRANS or the RTPAS—myself, representing California Park and Recreation Professionals; a State park representative; and also a representative from the resource agency.

It is our opinion that fair representation of non-traditional type individuals needs to be on the task force and included in the decision-making process and project selection. I think this is very important.

There is at this point in time an advisory council being selected. After the projects are selected, the advisory council will look at them, and they will keep a closer eye on the program, and we would like to encourage that environmentally-oriented individuals be included on that advisory council.

The second area I would like to address is education. I think this is very, very important. The ISTEA program, in our opinion, broadens the scope of transportation projects. Today, hopefully we are not just going to build roads. We are going to be building transportation projects that are compatible with our environment.

In the past, basically transportation projects have been awarded to public works and transportation departments. Today the players shouldn't be just those individuals, but should be individuals working in the park and recreation and water resource agencies, to name a few.

CALTRANS has made an effort to get the word out to individuals and agencies interested in this program, but I think that the educational process should not stop there. We need to educate all of the players, from the Federal Highway Administration to CALTRANS to the regional transportation agencies who are helping administer this program in California.

We do have a concern. There are over 40 regional transportation agencies in California. If the full intent of the ISTEA program is strongly in their minds is the question.

CPRS has held two State-wide workshops to educate our professionals on the ISTEA program on its intent and how they can be awarded funding.

We also included the regional transportation agencies in this workshop, and we would emphasize and like to request that this committee keep in mind the educational process that must take place if this program is to be implemented successfully.

The third area is competition on an equal basis. We feel that all cities, counties, and special districts must be able to apply for funding on an equal basis.

We have had a problem in California where only agencies holding master agreements with CALTRANS could apply for funding directly to the RTPAs. Other agencies, small cities, and districts could not do this, and they had to compete through the county and then hopefully be sent on by the counties when their projects are selected. This makes competition for special districts in small cities who don't hold master agreements very difficult.

We held many meetings, and we have been able to get that changed. It was very difficult, but we have, and we would encourage the Federal Highway Administration to look at this to try to simplify the process. And I am hoping that other States throughout the United States do not have the same problem, and if they do that this process can be changed.

My last comments are on the National Recreational Trails Act, which has been discussed. This program authorizes basically \$30

million a year. Of course, you know in 1991 no funds were allocated. In 1992, 7.5 million was allocated.

I would strongly encourage the full funding at 30 million, and we would also like to see if the funds that weren't allocated in 1991 and 1992 could be also authorized or allocated.

The other item is the formula. Member Kim brought this up earlier. In California we are really having a little bit of trouble with the formula that is being used to disburse the funds, and we feel that the formula needs to be reevaluated.

The fuel that is used in California needs to be reallocated. At the present time, California only receives 4 percent of all of the funds that are available, and we feel that we are only credited with about 25 percent of the amount of fuel that we do consume. We feel this is grossly inadequate; that a State with a very large land base, with large off-highway fuel consumption, and with 10 percent of today's population here in the United States has more money coming to us.

I want to thank you for the opportunity to testify before this committee. We are in support of the program. We have been participating in it. And if we can be of any assistance to you or CALTRANS or the Federal Highway Administration, we would like to do that.

Thank you.

Mr. RAHALL. Thank you.

Ms. MERRITT. Good afternoon, Mr. Chairman.

We appreciate the opportunity to present the views of the National Trust for Historic Preservation concerning the implementation of the enhancements program created by ISTEA.

We have submitted written testimony for the record, and I'd like to summarize some of the key points in that testimony.

The National Trust strongly supported the ISTEA legislation, and ever since it was enacted we have been working with States and local communities to help them implement the new law.

We as the National Trust have taken a long-standing interest in transportation policy, and for more than a decade we have been one of the strongest advocates involved in enforcing section 4(f) of the Department of Transportation Act, which protects historic sites and parks.

But the ISTEA legislation, and particularly the enhancements program, has given us the opportunity for a new relationship with the Department of Transportation—one where we can work together to accomplish mutual goals as partners, rather than always confronting each other as adversaries.

In fact, we'd like to thank the Federal Highway Administration for its support and its partnership in co-sponsoring a series of 11 conferences with the Surface Transportation Policy Project Coalition on transportation planning for livable communities.

These conferences have been going on around the country for the last five months, and have trained more than 3,000 people in understanding the ISTEA planning process and how the public can get more involved.

The important function of these conferences has been to bring together transportation officials, along with local planners and concerned citizens. And many of the recommendations that we offer

today are based on exactly what we have learned from listening to the participants in these conferences from around the country.

The enhancements program has been an extremely important and innovative development in transportation policy, but because of the fact that the program really represents a radical departure from the old way of doing business for most States, we have found that the initial implementation of the program has been inconsistent and, in our view, it has not yet lived up to its promise.

We have several recommendations for improving the enhancements program, and we'd like to point out that none of our recommendations would require statutory changes.

The first and most important problem, in our view, is that the States urgently need additional guidance in order to develop and implement the enhancements program.

We understand that Federal DOT policy calls for a hands-off approach in order to allow the States flexibility. But we are concerned that the Department has taken this policy too far. And especially during the first crucial years of this new program, the States want more help from the Federal Government.

The Federal Highway Administration did issue a brief guidance memorandum on the enhancements program about a year ago, and although we agree with most of what is in the memorandum, a lot more guidance is needed because the program is still being applied very inconsistently.

We have identified several areas where we think specific guidance is necessary.

The first is the mandatory 10 percent allocation of funds for enhancements. As you know, ISTEA does require that 10 percent of the funds be apportioned for enhancements, but the States are not spending the 10 percent. They are assuming that the 10 percent requirement only applies if ISTEA is fully funded, and that any difference between the authorization level and the obligation ceiling is absorbed by the enhancement funds. So, under this interpretation, the 10 percent requirement is basically being treated as optional.

Of course, one solution to this problem is full funding of ISTEA but, in the meantime, Federal guidance is needed instructing the States that they must allocate that 10 percent for enhancements, based on the funding that they actually receive each year.

A second area that needs more guidance is public participation. Despite the emphasis in ISTEA on public involvement in planning and project selection, the States have been very inconsistent in attempting to carry out this requirement. And most of them have not been successful.

We think one useful response would be a Federal Highway Administration report evaluating the best procedures for public participation from among those that have been developed by the various States. These model programs could then be showcased to the other States in order to improve outreach nationwide. In fact, a report on the best procedures from the different States would be a good vehicle for guidance in many other aspects of the enhancements program.

Another significant problem that needs to be addressed by guidance is that many States have adopted very restrictive policies for

matching the Federal funds on enhancement projects. The States often refuse to allow local government funding or private contributions to be used towards the required 20 percent match. And States are also refusing to consider the value of significant in-kind contributions such as donated land or buildings, and donated labor and materials.

As a result, many worthwhile enhancement projects are being passed over, even though enormous contributions have been made and the funding is available for these projects.

In the historic preservation movement, we have always recognized and depended on the voluntary contributions of property and funds from local citizens who are committed to protecting community resources. And we believe the Federal Government should recognize the value and the public benefit of these resources, as well.

Of course, we recognize that non-cash contributions such as building and land do present valuation questions, and we would certainly be willing to work with the Federal Highway Administration in developing a fair way to approach this issue. But the current policy is not to value these contributions at all, when these funding sources actually present a tremendous opportunity for public/private partnerships and for increasing the leverage of Federal funds. So we urge the Federal Highway Administration to adopt this policy through guidance, and to endorse the use of non-State funds and in-kind contributions for matching.

The next issue that needs some guidance is project eligibility. The ten enhancement categories in the ISTEA legislation were specifically designed to encourage projects that go above and beyond what would normally be environmental mitigation. But the States and the FHWA division offices still need a lot more guidance on how these ten categories are defined.

We have found that some regions are rejecting projects as ineligible, when those same projects are being approved in other regions. So there is obviously a lot of confusion.

In addition to guidance, our second major recommendation is the need for training that combines Federal, State, and local officials.

We have found that the conferences we co-sponsored were extremely successful and extremely valuable in bringing these constituencies together. There is still a huge demand for more of this kind of information, so we would like to see the Federal Highway Administration carry out more of this kind of joint training and education.

Finally, there is a need for much better monitoring and data collection at the Federal level regarding how enhancement funds are spent. Even though this is a huge investment of public funds, the Federal Highway Administration has remarkably little information about how the money is being spent by the States.

Ironically, the national nonprofit organizations know more about how that money is being spent than the Federal Highway Administration does.

The agency should be collecting a lot more specific data from the State DOTs on how the money is being used. Unless this is done, we are concerned that the lack of accountability will make it very difficult for the public and for Congress to evaluate the effectiveness of the enhancements program.

I would be happy to answer any questions.

I would like to thank the committee for inviting the National Trust to be here today and for your concern about increasing the effectiveness of the enhancements program.

Mr. HIEMSTRA. Thank you, Mr. Chairman.

My name is Hal Hiemstra. I am the Vice President for National Policy at the Rails-To-Trails Conservancy. I am happy to be here today to address you and the other committee members on survey work that we have been doing over the last five months on the transportation enhancements program.

The Rails-To-Trails Conservancy is a national nonprofit conservation organization founded in 1985 for the purposes of identifying, preserving, and converting abandoned rail corridors into a nationwide network of public trails, non-motorized transportation corridors, and public uses.

RTC is the Nation's largest trails organization, with over 50,000 members, and staffed chapters in six States.

I might just add that we are just now embarking on a State-wide rail corridor inventory and study in the State of West Virginia, and hope to have those results presented to the State Department of Transportation and other State agencies at the conclusion of this calendar year.

RTC's interest in ISTEA generally, and transportation enhancements program specifically, comes from our strong belief that the integration of trails into a community's transportation infrastructure provides critically needed and realistic non-motorized transportation alternatives for pedestrians and bicyclists. Because pedestrians and bicyclist programs are featured throughout ISTEA, we feel particularly strongly that the trails components are legitimate transportation vehicles and need to be taken seriously, and we are seeing a real shift in public attitude toward trails in this country.

Our comments today on the implementation of the transportation enhancements program, as I said, are based on a study that we conducted beginning in November of last year and completed in March of this year, and we will be releasing a 100-plus page report on the transportation enhancements program within the next couple of weeks.

Attached to this testimony are a number of charts and graphs and flow charts relating to implementation, which you should find interesting.

Before I get into some of the details on the enhancements program, I just want to emphasize that RTC strongly supports comments that have been made by other members of the conservation community that the committee not take up a technical corrections bill on ISTEA at this time. Such changes are premature when new regulations have not even been finalized, and we believe that if the committee feels so compelled to take up a technical corrections bill at this time, we strongly urge and request that the public be given an opportunity to review the specific legislative language prior to the subcommittee or full committee's markup of that legislation.

Moving on to the transportation enhancements program, my written testimony includes nine specific issues that we have developed specific recommendations on. I am not going to take the time

today to go through each of those nine, but let me hit just a few of the highlights.

First of all, as Ms. Merritt indicated, we feel that the transportation enhancements program has been slow off the mark.

First and foremost, while we see successes all over the country, there has been a pervasive slowness in developing these programs. States like Pennsylvania, Colorado, Maryland, Michigan, and Washington have all moved aggressively to spend enhancement funds and get their programs up and running, but other State programs are lagging far behind, and some programs are basically non-existent even today, 15 months after the legislation was passed.

Fortunately, we have begun to see a real shift this spring in the implementation of the transportation enhancements programs around the country. We are now seeing that some 30 States have developed some sort of program guidelines some sort of application process, and are moving ahead now with either their first funding cycle, or have plans to complete a funding cycle within the next few months. This is real progress but, as I said, we have been waiting now for a while for this step to finally take place.

Concerning the expenditure of transportation enhancement funds, the 44 States that responded to our comprehensive, 11-page survey indicated to us that they have made project commitments on \$187 million in enhancement funds. That compares with the availability in fiscal year 1992-1993 dollars of 771 million. So you can see, as Tony Kane pointed out this morning—that only 10 or 15 percent of the money has actually being spent.

The first attachment to the testimony that I have presented to the committee includes this pie chart which shows where the \$187 million has been allocated. The four largest sectors out of the ten enhancement categories are rail trails, bicycle/pedestrian facilities, landscaping, and historic transportation facilities. All ten enhancement activities have received funding around the country, but those four are the four that are receiving the majority of the funds, based on what the States are telling us at this time.

Considering citizen participation, a question was asked this morning about citizen participation, and a comment was made that the majority of the States are, in fact, incorporating citizen activists and citizen advisory committees in their programs. Our survey does not suggest that to be an accurate statement.

We have seen that only 17 States have reported to us that they include citizen representation on advisory committees, and out of those 17, only 13 States actually include the citizens in any kind of project selection or project review capacity. We see this as an area that needs a lot of additional direction from the Federal Highway Administration, and an area of potential growth in program development all over the country.

Concerning Federal Highway Administration guidance, we strongly concur with the transportation enhancement guidance issued by the Federal Highway Administration on April 21 last year, but we are disappointed in the lack of ongoing encouraging program guidance since that time.

We feel that some of the States are using the lack of guidance as an excuse to delay program development. Because the enhance-

ment program is a brand new program this lack of guidance is also resulting in development of programs which vary widely in quality and sophistication around the country.

Some State programs are quite sophisticated in their project selection process and project review procedures, and other States are really less than we would like to see as far as project selection goes—certainly not a very open process and not a very easy process for local communities or private individuals or private organizations to access.

We urge the committee to request the Federal Highway Administration to provide more ongoing guidance to the States about model program elements like Pennsylvania's excellent citizen advisory committee approach, like California's proposed project selection criteria, like Maryland's creative inter-agency approach to project review, or Washington State's exemplary process involving MPOs and regional planning agencies in project selection.

Turning to the issue of soft and private match, several of the speakers earlier today have talked about this issue. We also have found in our survey results that this continues to be problematic for States, and particularly for local governments and for project sponsors who might not be local governments.

Right now the Federal Highway Administration is working off a November 17, 1992, memorandum about private match and how to interpret private match, and suggesting that only State match can match the Federal funds.

We understand the reasons behind these interpretations, but recognize that it is causing significant problems as States are trying to implement their enhancement program.

In these times of financially-constrained government budgets, this exclusion of private funds eliminates the consideration of many worthy projects, as Betsy Merritt suggested, and is contributing to the slow spending of enhancement funds and eliminates a unique opportunity to stimulate new public/private transportation investment opportunities.

Turning to the 10 percent set-aside, we, too, have found in our survey results that there seems to be considerable confusion over whether Congress intended the 10 percent set-aside on the transportation enhancements program to relate to the obligated levels of STP or the authorized levels of STP. We strongly believe that Congress intended that 10 percent of any STP funds expended in a state be spent on transportation enhancement projects. We would encourage the committee to look into this issue, as well.

Considering Federal Highway Administration oversight, one of the factors contributing, we feel, to the ongoing confusion of the enhancements program as it starts to get off the ground in this country is the very general reporting requirements now required by Federal Highway Administration. The Federal Highway Administration has asked the State specifically to tell them how many dollars they are spending in the enhancement category under a category called 33(b), and that is about the extent of the reporting that is being required.

Some States are, of course, providing much more information to Federal Highways, but generally not enough information is being provided, and we can't very well expect Federal Highways to give

better guidance if they are not getting the information. Hence, we would urge the committee to encourage Federal Highways to ask for more information from the States and direct FHWA to conduct a study on implementation of the Transportation Enhancements Program.

Finally, on joint training, we, too, have seen and participated in this series of conferences going on around the country. The interest has been overwhelming, but the confusion over ISTEA is tremendous. And there seems to be a real need for ongoing joint training among not only the citizens and the State DOTs, but also the State DOTs and the Federal Highway Division Administration offices and also the metropolitan planning organizations.

Because MPOs are required under ISTEA to include in part of their metropolitan transportation improvement programs a transportation enhancement element, MPO's need to be included in the process. We are concerned that this isn't happening. And we are also concerned that MPOs, while they have to develop a transportation enhancement element, don't have the authority to program the transportation enhancement funds. That happens at the State level, so there is just a basic disconnect on the way that the MPOs are involved in the transportation enhancement program.

One of the ways to correct this problem, short of legislative recommendations which we feel are too premature to make at this time, is for more joint training sponsored by the Federal Highway Administration.

Mr. Chairman, we would be happy to make available to the committee copies of our report when it is complete. In the meantime, as I said, a number of the charts and graphs are attached to the testimony.

I might point out that one of the charts is a map of the United States which shows where the citizen advisory committees are set up, and indicates which 17 States are experiencing progress in that area, and which of the States are making no progress at this point.

I would be happy to answer any specific questions you have, and would also like to say that Bob Patten, who has been conducting the research, is sitting behind me. If there is anyone in this country who knows more about implementation of the transportation enhancements program, it is probably Bob Patten, and he is here today.

Thank you.

Mr. RAHALL. Mr. Wilkinson?

Mr. WILKINSON. Thank you, Mr. Chairman.

We appreciate the opportunity to testify today. As I look up, I see Congressman Anderson who is, in my opinion, the godfather of bicycling and walking being included in the Federal transportation programs, the Congressman having introduced the initial legislation in 1972.

My name is Bill Wilkinson. I am Executive Director of the Bicycle Federation of America. With me today is Andy Clarke, our Project Manager.

We have provided written testimony for the record, so today I'd like to highlight a few points and have Andy share with the committee what he has been hearing from agencies and the public as he has been traveling around the country, as has been mentioned,

for the past five months as part of a series of regional transportation conferences related to the implementation of ISTEA.

First, ISTEA is a big change for everyone—public officials, public agencies, and the general public. I consider the six-year period covered by the act to be one of transition.

There is a need for the Federal agencies, however, to constantly reiterate the intent of the Congress in passing ISTEA, and there is a need for this type of Congressional oversight to help ensure that this new tool, ISTEA, is being used appropriately.

Second, the transportation enhancements program serves as a good example of ISTEA in action. It brings together new partners, brings together new kinds of projects, and brings out the need for new processes for project review and selection.

It will take time to get all of this worked out, as we have heard, and for things to settle down.

While there are already many positive benefits coming from the transportation enhancements program, as Hal reported, in some States there are operational difficulties that are currently thwarting the intent of Congress.

Third, with regard to the transportation enhancements program and bicycling and walking, I'd like to give our philosophical spin on this, and that is: we don't consider that provisions for bicyclists and pedestrians are enhancements to streets and highways. We believe them to be essential features of good highway design.

On the other hand, we applaud the actions of State and local agencies to ensure that many of the opportunities to enhance bicycling and walking are, in fact, being recognized and funded.

Still, bicycle and pedestrian provisions are eligible, in fact, for all ISTEA funds. I understand that Andy has been stirring up interest around the country by calling to people's attention that bicyclists and pedestrians really have their eyes set on all \$153 billion.

Our goal, in fact, is that all ISTEA funds should be spent in such a way as to improve rather than degrade conditions for bicycling and walking.

FHWA guidance makes this clear in memos from the former administrator, and so does AASHTO in its various documents. But the message has yet to reach all of the State and local agencies and the professionals that staff them.

I'd like to just interject that, frankly, and somewhat sympathetically, we've got a lot of State agencies that have been charged for the past 35 years to design and supervise the construction of an interstate highway system. In the last two years, they have been handed a complete rewrite of their mission and charge, and it is only reasonable to expect that there is going to be some adjustment that needs to take place—again, the transition concept.

Only if State and local agencies accept this will they start to provide for the over 200 million pedestrians in this country and the over 100 million people who ride bicycles.

I would like to turn to Andy and ask him to share with you what people are saying at the State and local levels about ISTEA.

Mr. CLARKE. Thank you, Mr. Chairman, and thank you, Bill.

As we have heard, we have had between 3,000 and 4,000 people attend a series of 11 conferences around the country. I would say about one-third to one-half of them have been citizen participants,

and one-half to two-thirds have been from public agencies. It really has been exciting to see that mix of people and the mix of new partners that ISTEA has thrown together getting along and discovering that they do have quite a bit in common.

All of them, to a person, have been excited by the opportunities and the challenges offered by ISTEA.

I want to make just a couple of quick points on the things I have learned, having been to 10 of the 11 conferences.

Number one, ISTEA created, among other things, the State Bicycle and Pedestrian Coordinator position in every Department of Transportation. We have met over 40 of them at these conferences, and at another conference for the coordinators in San Diego. Almost to a person, they are doing a tremendous job, and the role that ISTEA carved out for them and the function that they were expected to serve is really happening.

Many of them are also closely involved in the implementation of the enhancements programs in their States.

The second thing I want to draw the committee's attention to is that certainly among the citizens there is a fear that the plans that ISTEA creates and requires will never get implemented.

There is a fear that the plans will be written and implemented poorly by professionals that haven't the skills and the tools and the knowledge to provide for bicycles and pedestrians in the appropriate way.

There is also a real fear that the public participation which ISTEA generates will turn out to be lip service only.

Now, I have seen agencies that I would never have expected to see talking about bicyclists, pedestrians, and others as customers rather than a nuisance, as they have done in the past. And it has been exciting to see that. And there is a level of trust that the citizens are going to have to develop over time that the agencies are, indeed, going to serve them well.

We have a wall in our office which we call the wall of shame, because it is a wall full of plans and documents that were written in the 1970s and 1980s that have really never been implemented. We are determined to make sure that this doesn't happen again in the 1990s.

The conferences you have heard about are part of that training. Ourselves and other organizations provide a part of that. We have been encouraged to see that in more than 20 States in the last 12 months, as a consequence of ISTEA, people have started to get bicycle and pedestrian advocacy groups organized at the State level because they want to make use of the potential that ISTEA offers.

But there is also a strong role, as people have mentioned, for the Federal Government and for Congress and individual Members of Congress. The guidance documents and the regulations people have mentioned are important. The memoranda from the Federal Highway Administration have proved to be very persuasive in the past two or three years.

And for Members of Congress, I think one of the most interesting and exciting things we have seen is individual Members having field hearings or their own meetings on ISTEA and the implementation of ISTEA around the country. That has helped to bring some

of the new partners together, and has helped to focus people's interest in ISTEA and the enhancements program, as well.

With that, I will hand back to Bill to finish up.

Mr. WILKINSON. In closing, I would like to say that the issue before us is how ISTEA is being implemented. The bottom line is: are we doing what needs to be done to ensure delivery of the full promise of ISTEA?

We believe that we must all work together—the public; the interest groups; local, regional, State, and Federal agencies; and the Congress, to make sure this new process is implemented in such a way as to produce the sustainable transportation system our cities and Nation need, or we will fail to deliver at the same time more livable communities, more jobs, and a quality environment.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you.

Ms. Merritt, let me begin with you.

The last time you testified before a subcommittee I chaired we discussed Blaire Mountain in my home State of West Virginia, and I am happy to report to you that the mountain still stands. It has not been strip mined.

Ms. MERRITT. That's great.

Mr. RAHALL. When you talk about FHWA needing to provide more guidance to States with respect to types of projects eligible for funding in the enhancements program, what specific suggestions might you have in that regard?

Ms. MERRITT. Well, one suggestion is that the surface transportation policy project has developed more specific guidance with more details about what, in the view of the national environmental groups, should be included and excluded from the various ten categories. We have certainly been peddling that guidance around the country.

But that's an example—and we'd be happy to submit it to the subcommittee—of the kind of additional definition that would be very, very helpful.

Mr. RAHALL. Yes, we would like to have that information.

Ms. MERRITT. OK. We'll do that.

Mr. RAHALL. Thank you.

[The information to be supplied follows:]

Mr. RAHALL. Would you explain what you mean when you state the environmental compliance requirements have occasionally been used to obstruct approval of enhancement programs? Would you give us some examples there, as well?

Ms. MERRITT. Well, I don't know if I can give you specific examples. I am rather surprised that we have been hearing this from people around the country. Although I have not personally attended any of the conferences, perhaps others who have can give you examples. But it is very ironic to us that this issue is being used as an obstacle because, as you might imagine, we are normally in the position of complaining that these environmental compliance laws are not being strictly observed in projects where we think there is really serious devastation to environment and historic resources.

But here what we are hearing from people around the country is that many of the States are insisting on full-blown compliance,

which is time consuming, with respect to projects that are having beneficial effects rather than adverse affects on resources—historic and environmental resources.

In our view, the solution to this problem should be the use of streamlined procedures that are in place and have already been developed by the Federal agencies for compliance with NEPA and section 4(f) in the National Historic Preservation Act.

Examples are National Historic Preservation Act and 4(f) both have a provision for programmatic agreements, for streamlined compliance when there is, in fact, no adverse environmental effect of a project.

Similarly, under NEPA the Federal Highway Administration has regulations in place that allow for a specially-designed categorical exclusion when it is clear from the project that there is not an environmental problem.

So as long as those safeguards are used and those existing mechanisms are used, we think that this should not be an issue. Environmental compliance should not be an issue that holds up project selection when there is no adverse environmental impact.

Perhaps one of the other panel members can speak to a specific example that was raised at one of the conferences. I was just surprised that we are hearing this issue at all.

Mr. HIEMSTRA. I can speak to a specific example that we are hearing about in the State of Pennsylvania. Pennsylvania generally has a fairly good transportation enhancements program, and so it is tough for me to pick on them, but this is one that has come to our attention.

Because we are interested in rail trails, we are particularly interested in whether enhancement funds are being used for the acquisition of rail corridors to be turned into rail trails. What we are seeing in Pennsylvania is that in some of the State division offices of the DOT, even though the rail corridor already is an existing right-of-way, they are saying that the transfer of that right-of-way from a rail use to a trail use requires a complete environmental impact statement before you can spend enhancement dollars for the acquisition.

What we are suggesting is that if it was a true acquisition of new right-of-way we would certainly be arguing in favor of that level of environmental review, but when we are talking about shifting use of an existing right-of-way, then perhaps a streamlined environmental review process would be more appropriate.

Mr. RAHALL. Ms. Cox, you have expressed concerns that non-traditional transportation people need to be included in the transportation decision-making process, that a concerted effort needs to be made to identify agencies that are interested in transportation, and that local governments must be able to compete for ISTEA funding on an equal basis.

I share your concern there and support those recommendations, as well.

However, are the concerns that you have raised better addressed at the State and local levels of government?

Ms. COX. I think, first of all, on the education aspect that you discussed, that it is very important to deal with the competition.

When we had the meetings in the education process on trying to make all agencies so all agencies could compete with the process, we met with the Federal Highway Administration, CALTRANS, and then myself and representatives from the RTPA.

The educational process on who could do what and who could allow us to apply on a competitive basis was very—no one knew who could allow this to happen.

So, overall, I think the educational process needs to start on the Federal level and work down through the State and to the regional transportation agencies.

CALTRANS said they could not let us apply to the RTPAs because the Federal Highways Administration was saying they could not allow that. And then the Federal Highways were saying that they couldn't do that because CALTRANS would only allow master agreements.

So there was a lot of mix-up there on whose problem or who had jurisdiction and who could allow certain concerns of ours to be addressed.

Mr. RAHALL. Mr. Hiemstra, in regard to the restrictions on the use of private matching funds that you mentioned, are you saying that only those categories that are of interest to the State or local governments are being funded?

Mr. HIEMSTRA. No. What we are saying is that some States have specifically set aside a portion of the transportation enhancement funds for projects that they want to sponsor, and then they are making the rest of the funds available for everyone else. In other States they are making all the funds available on more of an equal basis.

Unfortunately, because of the Federal Highway memorandum on November 17, 1992, which excluded soft or private matching funds, some States have gotten so nervous over the way the Federal funds might be withdrawn, if the State match was determined to be ineligible that they have ended up just pulling back and saying that they are not going to be able to look at any project that isn't sponsored by a local government that has the match money up front, they are not going to be able to look at, because they are not going to use their own State funds for that match.

In my written testimony I use Maryland as an example of a State that went ahead and used their own State funds for a Federal match and now they are, in turn, using local in-kind soft matches and other kinds of creative approaches for local projects that are being sponsored at the local level. But Maryland is the exception. It certainly is not the rule.

Mr. RAHALL. Mr. Wilkinson, let me ask you a couple of questions.

Even though I knew there were a lot of bikers and walkers in the country, your testimony really brought home how significant the number is.

Clearly, with so many there is a basis for providing an adequate facility. Your testimony indicates that many States are using transportation enhancements program funds to create new opportunities for people to bicycle and to walk.

Are States also using other eligible program funds, such as national highway system, surface transportation, Federal lands highway funds, for these facilities, as well?

Mr. WILKINSON. Mr. Chairman, that varies tremendously from State to State. I will say that, again, going back to the permissive authority that Congressman Anderson caused to be included in the legislation over 20 years ago, in the 20 years leading up to the passage of ISTEA, there was probably less than \$50 million expended nationally explicitly on bicycle and pedestrian provisions.

This is one of the things we brought out during the development of ISTEA—that we felt that simple permissive authority hadn't worked.

With regard to the question about the involvement of the local governments with the States, I think there is a need to encourage the States to take a more permissive approach with local governments these days, involving them more in helping to determine the direction and nature of transportation investments.

What we feel that to effectively get commitment and utilization of funds for bicycle and pedestrian projects there is a need for changes in the philosophy of the States and local governments with regard to the design standards they used in the development of streets and highways.

Frankly, this lands largely in the lap of AASHTO, but we think there is a need for greater Federal involvement in the process, as has been the case over the years, in determining what should be the performance criteria of those design standards.

As the former Federal highway administrator commented a couple of years ago, bicycling and walking are the forgotten modes. They have, frankly, been left out of the planning, designs, and decision-making processes.

So no, the States haven't been doing all they could and, frankly, should do, either in terms of using other eligible programs or in improving design treatments.

Mr. CLARKE. Mr. Chairman, if I could add, a good example of the problem I think you are touching on is in the Chicago metropolitan area where, under the congestion mitigation and air quality program, about \$4 million worth of bicycle and pedestrian improvements have been approved by the Chicago area transportation study. They funded all nine of the bicycle and pedestrian projects that were put before them out of a total of about \$55 million that was available.

By contrast, in the enhancement program there was about \$19 million available for the Chicago metro area, and there were about 200 applications—far more than could possibly have been funded—and about one-third of the bicycle and pedestrian projects that were submitted for the enhancement program could have been and were eligible to be funded from the STP or the CMAQ money, or some other pot of money.

There are individual examples of STP and CMAQ and other funds being used for bicycle and pedestrian projects, but I wouldn't say it is pervasive yet.

Mr. RAHALL. Thank you very much.

Ladies and gentlemen, thank you for your testimony today.

Our next panel is composed of Ms. Susan Perry, Senior Vice President, American Bus Association, and Chair, Travel and Tourism Government Affairs Council, Working Group on Transportation. How many hats does she wear?; Mr. Derrick A. Crandall,

President, American Recreation Coalition; Ms. Mary Ann Lasch, Director of Programs, Scenic America; and Mr. Roy Muth, President Coalition for Recreational Trails.

Ladies and gentlemen, we welcome you to the subcommittee. This is the second time in two weeks for you, Susan.

Ms. PERRY. I figured I was in some degree of trouble with you on this one.

Mr. RAHALL. And, as with all witnesses, we have your prepared testimonies and they will be made a part of the record.

Will you be going first, Susan?

TESTIMONY OF SUSAN PERRY, SENIOR VICE PRESIDENT, AMERICAN BUS ASSOCIATION AND CHAIR, TRAVEL AND TOURISM GOVERNMENT AFFAIRS COUNCIL, WORKING GROUP ON TRANSPORTATION, ACCOMPANIED BY AUBREY KING, EXECUTIVE DIRECTOR, TRAVEL AND TOURISM GOVERNMENT AFFAIRS, COUNCIL WORKING GROUP ON TRANSPORTATION; DERRICK A. CRANDALL, PRESIDENT, AMERICAN RECREATION COALITION; MARY ANN LASCH, DIRECTOR OF PROGRAMS, SCENIC AMERICA; AND ROY MUTH, PRESIDENT, COALITION FOR RECREATIONAL TRAILS

Ms. PERRY. The Travel and Tourism Government Affairs Council, which is the other hat that I am wearing—the hat that I am wearing today—appreciates this opportunity to present the views of the travel and tourism industry on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991.

I am Susan Perry, as you said, the Senior Vice President of Government Relations for the American Bus Association. But today I am appearing before you as Chair of the Government Affairs Council's Working Group on Transportation.

I am accompanied by Aubrey King, who is the Executive Director of the council and much more expert in all of its business than I—and a West Virginian.

Mr. RAHALL. A West Virginian. That's nice.

Ms. PERRY. The Government Affairs Council is comprised of 37 national organizations representing every segment of the Nation's travel and tourism industry, including all modes of transportation, accommodations, food services, travel agents, tour sales and operations, attractions, recreation facilities, and other businesses.

The members of the council are listed in the full statement that we have submitted to you for the record.

Let me first give you an idea of the dimensions of this giant industry that we all represent in the council.

As a \$360 billion industry in this country that generates approximately 6.1 percent of our national product, it ranks as our third largest retail industry. The six million Americans that are employed by travel and tourism make it our second largest employer. In 37 States, it is among the top three sources of jobs. In the 1980s it generated new jobs at a rate twice that of other industries, and expenditures of more than 43 million international visitors to the United States makes it our largest export.

From the standpoint of travel and tourism, ISTEA indeed was a landmark. This first post-interstate surface transportation legislation greatly benefits travel and tourism by authorizing funding for

an expanded national transportation infrastructure, but it also represents unprecedented recognition of the inter-connection between travel and tourism and that infrastructure. We are grateful for this connection that you have made in this legislation.

It has long been recognized that highways are integral components of economic development in terms of facilitating the commercial movement of goods and people. In ISTEA, Congress and the Nation have explicitly recognized that our highways also promote economic development by facilitating travel and tourism.

This recognition is evident in several key segments of the legislation—most notably, in the new requirement that State transportation plans consider the needs of recreational travel and tourism, in the creation of the national scenic byways program that we have heard so much about already today, and in the innovative transportation enhancements program which authorizes funding for a number of projects directly related to travel and tourism.

One major consequence of ISTEA has been to reshape in many States the relationships between State travel directors and State transportation officials.

The Government Affairs Council attempted to gauge these new relationships by surveying all 50 of the State travel offices. Sixty-four percent of those, or 32 of the States, responded to the survey, and the results strongly suggest that better lines of communication are being established between travel and tourism interests and the transportation agencies, and that transportation officials are more aware of travel and tourism transportation needs.

At the same time, State travel directors in several major States expressed some dissatisfaction and frustration with their relations with their State transportation colleagues.

We urge this subcommittee to remain aware of the need for close relationships between these State agencies. The Government Affairs Council will continue to monitor the relationships, and we will keep you informed of any further developments.

Travel and tourism industry is gratified at ISTEA's new policy directions and program initiatives and urges that they be continued and expanded. We have several recommendations which we believe will enhance the capacity of ISTEA to achieve its goals. We strongly urge timely approval and completion of the full national highway system to facilitate movement of our Nation's goods and people with maximum efficiency and safety.

We urge that ISTEA be amended to remove scenic byways funding as a factor in the minimum allocation formula. You will hear more about that from one of my co-panelists. The current interpretation creates a disincentive for these States to participate in the scenic byways program.

We believe that current law and policy—and you and Mr. Shuster, I believe, both referred to it earlier today—on outdoor advertising should be maintained with regard to scenic byways to strike a proper balance between the scenic standards that make those roads so appealing and the economic needs of nearby businesses and communities.

We recommend that expenditure of transportation enhancement funds should be authorized for travel information centers, that they be made eligible projects for those funds. Such expenditures would

promote greater utilization of the other travel and tourism-related projects authorized as transportation enhancements, and be in accord with ISTEAs general emphasis on economic development.

The Department of Transportation's forthcoming study of tourist-oriented, directional signage—which we call TODS—should be used to achieve more effective and equitable use of TODS and logo signage.

And, as a truly inter-modal industry, travel and tourism urges that high priority be given the work of the National Commission on Intermodal Transportation.

ISTEA should be amended to direct metropolitan area planning organizations to give the same transportation planning consideration to the needs of recreational travel and tourism as the act already requires for State transportation plans.

With the substantially expanded authority given by ISTEAs to the MPO, it is critical that they consider carefully the impact of their decisions on their local travel and tourism industries.

In conclusion, Mr. Chairman, the travel and tourism industry is pleased with ISTEAs and its implementation so far. Congress, and especially this committee and subcommittee, can be proud of what they crafted in 1991.

We have tried to identify some specific areas in which further progress, more timely action, and, in a few cases, policy changes would be beneficial. We look forward to continuing to work closely with the committee and the subcommittee to ensure that the full potential of ISTEAs is realized.

Thank you.

Mr. RAHALL. Mr. Crandall?

Mr. CRANDALL. Thank you, Mr. Chairman.

I come today with a smile on my face because I had a wonderful byways experience, and if I have time at the end perhaps I can tell you about what it is like to be in a 500-car parade where the most recent car was a 1957 Chevy out in Arizona on the Route 66 historic back-country byway. I am here today to talk today about the scenic byway program and about the role of the American Recreation Coalition and our scenic byways coalition on that program.

It is an area of great excitement for us. It is an area of response by this committee to recommendations made in 1987 by the President's Commission on Americans Outdoors, through the leadership of Jim Oberstar and Jay Rockefeller and others. We certainly appreciate your personal role in this.

We would like to point out that recreation is a \$300 billion a year industry in this country, involving expenditures on everything from purchase of boats and RVs to whitewater rafting services and guide services for fishing. Virtually all of recreation depends upon mobility; therefore, we are interested in much that this committee is involved in. But certainly scenic byways is at the heart of our interest.

In 1987, there were just a handful of active State scenic byway programs, and virtually no Federal activities whatsoever. Today, we have more than 75 percent of all the States with scenic byway programs, including the wonderful State of West Virginia. In fact, this year West Virginia secured some \$124,000 out of the interim scenic byway program to do some work on two existing scenic

routes—the Highland Scenic Highway and the Midland Trail—as well as to continue the development of your State's scenic byways program.

In State after State, you will find that these roads that Americans love are now appearing on maps and in the State tourism brochures, and we are seeing, at the Federal level, cooperation between the Federal land managing agencies and the State tourism agencies.

The national forest scenic byway program has grown to more than 110 routes, stretching some 6,000 miles. The Bureau of Land Management back-country byway system now comprises 57 routes, each of these routes created and operated in partnership with State, local, and private organizations, and collectively drawing millions of visitors.

I do have to say that the Federal Highway Administration has done a wonderful job, and we have nothing but praise. We are not one of the traditional constituents of FHWA, and we have been very pleasantly surprised by its responsiveness and its desire to work with us over the past five years.

We would not be here today, though, if all of our comments caused us to smile. In fact, there are some points that we think deserve your attention. Earlier in the hearing, you and others talked about some of our concerns.

Our greatest concern involves the funding of scenic byway programs under both the interim and the permanent grant programs.

The grants created under this program are based upon the merit of the applications. We support this strongly. In fact, we believe that's the only way that a program of this small size nationally can accomplish anything—to base the grants upon merit. Yet, in the final hours of consideration of ISTEA, scenic byways grants were tied to the section 1013 minimum allocation provisions. For more than 20 States that are net donors to the highway trust fund, this has resulted in substantial confusion at best, and a financial disincentive to participate at worst.

Simply put, approximately 20 States risk losing dollar for dollar in minimum allocation funds any monies they'd receive under the scenic byways grant program.

Unfortunately, the picture is not black and white. Various equity adjustments, including minimum allocation, donor State bonuses, and hold-harmless apportionments, make the situation difficult to discern and different for literally every State every year.

What is clear is that the uncertainty and the likely losses have had a chilling effect on several States, including California. States have told us they are simply unwilling to undertake the time required to apply for funds which, even if they are successful, will come with far more limitations on use than the funds that they may be passing up dollar for dollar.

We ask your help in removing the merit-based scenic byways grant program from the provisions of section 1013 and thank you in advance for your help on this.

There is another problem, and that's that while the applications for scenic byways grants for this fiscal year totaled \$34 million, and only \$10 million will be available for distribution.

We believe that the projects, themselves, are meritorious and are, in fact, the kinds of exemplary projects that will lead the Nation in the positive directions we had hoped, and that clearly suggests to us the need for consideration of a modest increase in the funds available for scenic byways either under ISTEA or its successor legislation.

Finally, we want to express concern that the pace of the permanent scenic byways program is slower than we had originally anticipated. Simply put, FHWA was faced with more work than we had anticipated, more filling in the blanks, because of some sections that were deleted in the development of ISTEA. But its efforts were further complicated by constraints created by the Department of Transportation's overall limitation on monies available for use by advisory committees. The advisory committee has been limited to only two meetings per year, and has otherwise been constrained in terms of its works.

We believe that the scenic byways program can be and will be one of the most successful new initiatives under ISTEA, especially with your continued help and assistance.

Thank you.

Ms. LASCH. Good afternoon, Mr. Chairman and members of the subcommittee.

I am Mary Ann Lasch, a landscape architect and Director of Programs for Scenic America.

Thank you for providing me with this opportunity to testify before you on behalf of Scenic America.

Scenic America is a national, nonprofit organization dedicated to the conservation and enhancement of the scenic character and visual quality of America's communities and countryside.

During the drafting of ISTEA, our organization worked to include both the National Scenic Byways Program and the enhancement category in the legislation. We have been monitoring implementation of both those programs, and now have a few remarks on each in addition to my written statement.

On the category of scenic byways, this program is unusual in that the compatibility of resource conservation and economic development is higher in the scenic byway program than almost any other tourism or conservation program available. Scenic byways are widely recognized for their potential to create jobs and economic stimulus—especially in rural areas.

At the same time, scenic byways programs are grounded in the conservation of the intrinsic scenic, historic, cultural, natural, recreational, and archeological resources that make our communities unique and attractive places to live, work, and visit.

The strong public interest that we have experienced clearly shows that the public understands the value of resource conservation and the economic opportunities that it can create.

We have seen the creation of nine new State scenic byways programs since the passage of ISTEA as clear evidence of public interest in the program.

Secondly, visual quality and the protection of the intrinsic resources of scenic byways are the real key to sustainable, long-term economic benefits. Corridor management plans are a vital tool to ensure the economic success of scenic byway programs. These plans

will establish resource protection strategies, evaluate the needs for additional community and traveller services, address program safety and traffic improvements that are needed, and incorporate the public participation process in scenic byways.

The wise use of the resources of scenic byways will benefit communities and visitors across the country, and also our international visitors.

The national scenic byways and All-American roads and the National Scenic Advisory Committee are all created in ISTEA, and the Advisory Committee's role is to establish recommendations for the policy and structures of both these programs.

As you know, the committee is composed of representatives of the six Federal agencies, and eleven members that have been chosen by the Secretary of Transportation to represent specific areas of interest. Sally Oldham, Scenic America's president, represents scenic preservation issues on the Advisory Committee. Mrs. Oldham regrets that she was unable to testify before you today, but she is out of the country.

The Advisory Committee has completed six days of meetings to date, and plans to complete their work in June. The Committee members have made a very earnest effort to evaluate the many issues before them and to develop sound policy for these two programs. We commend the progress of the Committee so far. Also, the Federal Highway Administration has provided excellent technical support to both the National Scenic Byways Advisory Committee and to the implementation of the interim grant funds in a timely and efficient manner.

Federal Highway Administration's continued support for scenic byways programs is very necessary. This will include preparation, publication, and distribution of the Advisory Committee's final report. More importantly, the State DOTs continue to look to the Federal Highway Administration for training and guidance materials to implement the National Scenic Byways Program and the All-American roads programs.

These materials should address the minimum criteria for designation and the preparation of corridor management plans for the highways.

Finally, I do agree with the other committee panel members here today about the minimum allocation. I'm concerned it provides a incentive to many of the States' scenic byways applications, and we hope that you will find an effective way to address this concern.

Secondly, on the issue of transportation enhancements, of all the programs that are included in ISTEA, the public has shown the greatest interest in the transportation enhancement program. There is a very clear recognition that this program, which has a relatively small amount of funding, holds the most promise to respond to community need and character.

There is great hope on the part of the public for greater community involvement and influence in the funding of projects through the enhancements program. This also reflects the public's strong sense of frustration and disappointment in the past with the pre-ISTEA process for public participation and the implementation and selection of transportation projects.

We look to the enhancement program as a way to provide a new standard of quality for transportation projects and to provide model projects for the future. I think this is its most important function.

Like the other environmental groups that testified earlier, we have found very wide variation among the State DOTs in their interest, implementation, and administration of the enhancements programs. We urge you to encourage the Federal Highway Administration to provide additional collection and dispersion of information among the States to spotlight the strong programs of the various enhancement programs around the States.

In conclusion, I thank you for the opportunity to offer our observations and recommendations to the subcommittee. We look forward to working further with Congress and USDOT to achieve ISTEA's full potential.

Mr. MUTH. Mr. Chairman and members of the subcommittee, my name is Roy Muth, and I serve as the Chair of the Coalition for Recreational Trails.

I appreciate the opportunity to come before you today to present testimony about the National Recreational Trails Trust Fund.

The Coalition for Recreational Trails—CRT—was formed in January, 1992, for the sole purpose of ensuring adequate funding for the new trails trust fund. CRT's members are primarily national organizations, now numbering 25, which represent the interest of trail users—both motorized and non-motorized recreationists. The membership roster is attached to my statement.

The growing demand for additional trail mileage far exceeds the funds available. An ongoing, informal CRT survey, which has produced responses from 30 States and the District of Columbia, indicates a need for funding current trail projects totaling \$322.4 million. A summary of those responses is also attached to my statement.

As you may recall, the authorizing legislation contained in ISTEA sets an annual limitation and obligations of \$30 million for fiscal year 1992 through fiscal year 1997. In fiscal year 1992, no funds were appropriated. In fiscal year 1993, only \$7.5 million was appropriated.

Therefore, of the \$60 million that was authorized to be used on trail projects, only \$7.5 million has been allocated to the program.

We do understand, however that the Administration has included \$15 million in the fiscal year 1994 budget, and we are appreciative of the program support that this increase over current funding represents.

I would now like to use the Pennsylvania program to illustrate how these funds are being used.

In fiscal year 1993, the Pennsylvania Department of Environmental Resources received applications for 87 projects eligible for funding under the act. The funds allocated to Pennsylvania under the act totaled \$231,837.

Due to the limited amount of funds made available for 1993, the maximum Federal grant allowed for any one project is \$15,000, and the State will only be able to fund 17 of the 87 eligible projects.

We believe that the problem encountered by Pennsylvania will be repeated all across the country as the program is implemented.

Now, the problem of obtaining full funding as authorized has been made more difficult because contract authority was not conferred in the authorizing legislation. As a result of that problem, CRT recommends that the National Recreation Trails Fund Act be added to title 23 of the U.S. Code. We do recommend a number of slight changes, however. And in the interest of time, let me note that they are detailed in my written statement.

There is a second problem that we would like to bring to the attention of the subcommittee, which has to do with the estimate of the amount of fuel used by off-road recreation vehicles in each State. The act requires that the Secretary of Transportation and the Secretary of the Treasury must estimate the amount of fuel used and the taxes collected; however, we believe those estimates are flawed.

Both Secretaries are permitted to use vehicle registration and use data to make their estimates. Both the International Snowmobile Industry Association and the Motorcycle Industry Council provided data to the Departments of Transportation and Treasury. However, I do not believe an industry group or a user group provided data on fuel used by four-wheel drive vehicles. We believe that the fuel consumed by four-wheel drive vehicles used off-road is greater than the amount of fuel used by snowmobiles and motorcycles and all-terrain vehicles combined.

In order to obtain an accurate estimate, CRT recommends that the Trails Fund Act be amended to require the Secretary of Transportation to conduct one national survey of non-highway recreational fuel consumption by State. The study would be conducted by a private sector organization, and funding for the survey would be in addition to the funds for Federal program administration provided in the act. We estimate such a study would cost \$3 million.

Now, this recommendation is based on the value of the information obtained from a similar study, the national recreational boating survey, which provided fuel use data for recreational purposes for all types of watercraft. The one-year study was conducted by Price-Waterhouse under contract with the Department of the Interior, and was completed in October of 1991 at a cost of \$2.2 million.

As a result of that study, funding for the aquatic resources trust fund was based on accurate, justifiable data.

Mr. Chairman, the investment in these vital national resources is badly needed. We urge your leadership and that of the subcommittee in making the changes we have recommended so that adequate funds will be appropriated and the correct amounts allocated for the national recreational trails fund program.

Thank you.

Mr. RAHALL. Thank you very much.

We have a roll call vote on the floor in just a moment so, previous to asking questions, the subcommittee will stand in short, ten-minute recess.

Thank you.

[Recess.]

Mr. RAHALL. Susan, let me begin the questioning with you.

Under the Statewide planning provisions of ISTEA, States are required to develop transportation plans and programs for all sec-

tions of the State, coordinated with the metropolitan planning effects.

The Statewide planning provisions require consideration of a number of factors such as recreational travel and tourism.

Although the metropolitan planning requirements do not require the consideration of recreational and travel factors, do you believe these factors will be adequately considered by the MPOs as the MPOs coordinate their transportation plans with State plans?

Ms. PERRY. We are not sure that they will be, Mr. Chairman, and that's why we suggest that this subcommittee and Congress require that the MPOs take travel and tourism into consideration in their plans just as the States must take it into consideration in their plans.

Mr. RAHALL. Mr. Crandall and Ms. Lasch, during consideration of ISTEA Congress strenuously debated the issues relating to the Federal aid funds being equitably distributed among the States. As a result of those debates, the minimum allocation program was increased to 90 percent, and inclusion of new programs such as the scenic byway program was included in the calculation.

Is there support among the donor States to use funds allocated under the minimum allocation program for the scenic highways program?

Mr. CRANDALL. Mr. Chairman, I just don't have the knowledge to respond to that.

Mr. RAHALL. Ms. Lasch?

Ms. LASCH. Mr. Chairman, there have been several States who withdrew their application for interim scenic grants when they became aware of the donor State situation. Arizona and North Carolina are two. We have talked to other States that have said they will not apply because of the restriction on their funds through the minimum allocation. Some of those States have gone ahead to fund scenic byway activities out of their other funds. And a number of States have not made any action to use any funds whatsoever for scenic byways if they could not receive the interim grant fund.

Mr. RAHALL. In view of the quality and quantity of applications received for the scenic byway programs, are States using other Federal aid funds to advance scenic byway projects like STP?

Ms. LASCH. Yes, they are. Many of the States are quite creative in combining different sources of funding to support their scenic byway projects, in addition to using scenic byway funds, but the scenic byway grant funds are important because they emphasize the national priority for scenic byways.

Mr. CRANDALL. Mr. Chairman, clearly scenic byways are not a new device. In fact, you go back to the early 1900s, the Columbia Gorge Road and several others that were built clearly qualify as scenic byways. It is not a new undertaking for highway departments to be involved in scenic road construction.

But this committee and the Congress felt scenic byways were so important as to create a specific grant program through ISTEA—an act that we commend and think is terribly important for the long-term future of recreational travel.

What we fear is happening is that significant projects that would otherwise be funded through the categorical grant program are not

now coming to fruition, simply because of the question about whether the dollars will be lost to the State in another form.

Instead of the merit-led kind of categorical grant program that was conceived and considered in the hearings that were held by this committee, we are faced with a decision that was the result of last-minute negotiations in the conference committee which we were not privy to, obviously.

We recognize the difficulties that you faced in the last-minute negotiating of something like that. But I would say that it seems difficult for me to believe that \$10 million extracted from the MA provisions would dramatically affect the allocations to the States. Since this program is so clearly merit-based, as opposed to allocated by formula among the States, we think that it is not a case of putting the first hole in the dam. We argue that this is a special case, a unique case that really demands that kind of special attention.

Mr. RAHALL. Mr. Muth, can you tell us the process by which trail project decisions are made?

Mr. MUTH. Mr. Chairman, I believe that is going to vary from State to State. Frankly, it hasn't been going on long enough that I can even give you an estimate.

I do know from my very brief experience looking at the Pennsylvania program that it is simply a matter of applications being forwarded from all kinds of organizations—private, as well as public—and some sort of a rating system being devised by the State agency responsible for making those decisions and, in some cases, where they are active, getting some involvement from the State advisory boards, and then the decision is made.

Mr. RAHALL. What kind of projects primarily are being funded for motorized trail use and for non-motorized trail use?

Mr. MUTH. I think everything that is authorized in the act is on the table. We are talking about maintenance, restoration, development of trail head/trail sign facilities, some new trail development, easement acquisition and fee simple acquisition. Those activities are all in the act.

If I were to guess which one is getting most of the money, I would say maintenance.

Mr. RAHALL. You would say maintenance?

Mr. MUTH. Yes, sir. That would be my guess.

Mr. RAHALL. Okay. Mr. Muth, I have some additional questions that the ranking minority member, Mr. Petri, would like to submit to you in the record. We would appreciate it if you could provide him responses in writing.

Mr. MUTH. I'd be happy to do so.

Mr. RAHALL. Thank you.

Ladies and gentlemen, thank you.

[Mr. Muth's responses to Mr. Petri's supplemental questions follow:]

Roy W. Muth
Chair



**COALITION
FOR
RECREATIONAL
TRAILS**



3975 University Drive
Suite 310
Fairfax, Virginia 22030
703/273-9606
FAX 703/273-9271

93 MAY 4 1993

The Honorable Nick Joe Rahall II
Chairman, Surface Transportation Subcommittee
House Public Works and Transportation Committee
U.S. House of Representatives
Room B-376
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rahall:

The following information is provided in response to written questions given to me by Congressman Thomas E. Petri at the April 28, 1993 Subcommittee hearing.

QUESTION

In the past, trail advocates were hoping that providing actual contract authority, rather than authorization subject to annual appropriations bills, would ensure more stable, adequate funding for the trails program. Although the Appropriations Committee could still limit obligations, are you still supportive of this revision?

ANSWER

The CRT believes that contract authority would greatly improve the likelihood of full funding for the National Recreational Trails Trust Fund. However, we recommend a number of changes if the National Recreational Trails Fund Act is added to Title 23 of the U.S. Code.

The Trails Fund Act has an eligibility requirement that states by law reserve a reasonable estimation of the revenues received from nonhighway recreational fuel use for providing and maintaining recreational trails. This serves as the equivalent of a state match. Therefore, we request that the Trails Fund Program be exempted from Section 120 of Title 23, which requires the 80%-20% matching ratio. Further, the provisions in Title 23, Section 217 (h) (which restricts motorized use) and Section 217 (i) (which requires a transportation purpose) are not applicable to the Trails Fund Program, which clearly encourages multiple use recreational trails, and

provides for both motorized and nonmotorized users. And finally, although related to the Highway Trust Fund, the National Recreational Trails Trust Fund was intended to be a separate fund for recreational trails. Therefore, we ask that Section 104 (b)(3) (regarding hold harmless amounts) and Section 157 (a) (regarding minimum allocation amounts) not be applicable to the Trails Trust Fund Act. In other words, we are asking that the apportionments through the National Recreational Trails Funding Program not be calculated as discretionary funds that would reduce the hold harmless and minimum allocation funds that some state Highway Departments receive through Title I, Part A of ISTEA.

QUESTION

You have requested \$3 million for FHWA to study nonhighway recreational fuel use consumption by state. On what basis has FHWA determined state allocations for trail funds to date?

ANSWER

Although CRT members provided information to FHWA on fuel used by motorized off-road recreational vehicles, we do not know if FHWA considered that information when it determined state allocation of the \$7.5 million appropriated for FY 1993.

QUESTION

Has your organization conducted any studies or estimates on the amount of nonhighway gas tax revenues you believe are being collected?

ANSWER

The CRT has not conducted any studies nor has it made an estimate of the amount of nonhighway gas tax revenues being collected. However, two CRT members, the International Snowmobile Industry Association and the Motorcycle Industry Council, have made estimates. That information is attached to this letter.

QUESTION

Have you had an opportunity to review the guidance issued by the Federal Highway Administration in early April? Will this be helpful in administering the program?

ANSWER

CRT has not performed a formal analysis of guidance issued by FHWA.

However, anecdotally, we have heard from state administrators that there is enough information to permit them to solicit funding applications. The Pennsylvania program appears to be further along than any other. The Pennsylvania solicitation produced 87 applications for projects eligible for funding. Because of the limited funds allocated to Pennsylvania, only 17 of the 87 eligible projects will receive federal funds. The only problem we are aware of relates to private organizations. While the process of informing governmental organizations appears to be working, it appears that many private organizations that would be eligible for funds are not getting enough information. There is also concern that many private organizations will be unable to provide "up front" funding for program projects as is required under the program's standard reimbursement procedures.

QUESTION

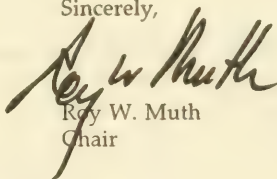
As the trails trust fund was being put together, there was some tension between motorized and some nonmotorized trail users. I know your organization has both types of user groups as members. Has this conflict diminished and has it affected the program in any way?

ANSWER

The existence of the CRT represents the agreement of its members on the importance of united action on trails funding. This does not mean that tensions between motorized and nonmotorized trail users have lessened. However, we believe the requirement in the Act that state recreational trail advisory boards be set up on which motorized and nonmotorized trail users are represented will lead to a lessening of tensions. For the first time, there is a mechanism to bring all trail users together to resolve conflicts and set priorities. The lasting legacy of the National Recreational Trails Fund Act may be that it has given recreational trails users a way to work together.

Best personal regards.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roy W. Muth". The signature is fluid and cursive, with the first name "Roy" being particularly prominent.

Roy W. Muth
Chair

RWM/jkg

**U.S. Federal Tax Collected on Gasoline
Used by Snowmobiles**

Snowmobiles registered in the U.S.	1.02 million
Estimated unregistered snowmobiles in the U.S.	.2 million
Total number of snowmobiles in the U.S. (conservative estimate)	1.22 million
Average amount of gasoline used by each snowmobile annually	63 gallons
Total amount of gasoline used by snowmobiles annually	76,860,000 gallons
Total federal taxes collected annually on gasoline used by snowmobiles @\$.14 a gallon	\$10,760,400

December 10, 1992

To <u>Roy Muth</u>	From <u>Rob Dineman</u>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

Motorcycle/ATV

# of vehicles (combined M/C & ATV)	3,643,000.00 ¹
Avg. gallons used per year by each vehicle	<u>76.00²</u>
# of gallons used by M/C & ATV annual total	276,868,000.00
Federal Fuel Tax	<u>.14</u>
Amount of Fed. fuel tax paid by M/C & ATV user	\$38,761,520.00

Snowmobile

# of vehicles	1,220,000.00 ³
Avg. gallons used per year by each vehicle	<u>63.00⁴</u>
# of gallons used by snowmobiles annual total	76,860,000.00
Federal Fuel Tax	<u>.14</u>
Amount of Fed. fuel tax paid by snowmobile users	\$10,760,400.00

4-WD

Total # of 4-WD Vehicles	14,335,566.00 ⁵
% of Total 4-WD used off-highway	<u>.15⁶</u>
# of 4-WD used off-highway	2,150,334.90
Estimated gallons used per year per vehicle	<u>300.00⁶</u>
# of gallons used by 4-WDs annual total	645,100,470.00
Federal Fuel Tax	<u>.14</u>
Amount of Fed. fuel tax paid by 4-WD users	90,314,065.00

8

Estimate of Non-Highway Recreational Fuel Taxes
Received in the Treasury During FY 1991

Amount of Federal fuel tax attributable to motorcycles & ATVs	\$38,761,520.00
Amount of Federal fuel tax attributable to snowmobiles	\$10,760,400.00
Amount of Federal fuel tax attributable to 4-WD	<u>\$90,314,065.00</u>
Total	\$139,835,980.00

5

0.3% of Highway Trust Fund Receipts (FY91)

Total HTF Receipts	\$18,452,762,046.92
0.3% of total HTF Receipts	\$55,358,286.14

Footnotes

- 1) Source MIC 1992 Statistical Annual
- 2) Source MIC Estimated Gasoline Usage by State - 1990
- 3) Source ISIA
- 4) Source ISIA
- 5) Source R.L. Polk & Company
- 6) Guesstimate

Mr. RAHALL. Our next panel is composed of the following individuals: Mr. Wayne Reece, Attorney at Law, Atlanta, Georgia; Ms. Nell Jones, Director of the Georgia Conservancy, Atlanta, Georgia; Mr. Harvey Clanton, Director of Human Services, Georgia Mountains Private Industry Council, Gainesville, Georgia; Dr. Tom Rodgers, Assistant Director, County Operations, Georgia 4-H Foundation, Athens, Georgia; and Ms. Carolyn A. Stradley, the President of C&S Paving, Inc., Marietta, Georgia, on behalf of Project Opportunity.

Ladies and gentlemen, we appreciate your patience in being with us all day. We do have copies of your prepared testimony, which are part of the record at this point, and you may proceed as you desire.

Wayne, are you going to kick it off?

TESTIMONY OF WAYNE REECE, ATTORNEY AT LAW, ATLANTA, GA; NELL JONES, DIRECTOR, GEORGIA CONSERVANCY, ATLANTA, GA; HARVEY CLANTON, DIRECTOR OF HUMAN SERVICES, GEORGIA MOUNTAINS PRIVATE INDUSTRY COUNCIL, GAINESVILLE, GA; TOM RODGERS, ASSISTANT DIRECTOR, COUNTY OPERATIONS GEORGIA 4-H FOUNDATION, ATHENS, GA; AND CAROLYN A. STRADLEY, PRESIDENT, C&S PAVING, INC., MARIETTA, GA, ON BEHALF OF PROJECT OPPORTUNITY

Mr. REECE. Mr. Chairman and members of the subcommittee, ladies and gentlemen, we are very proud to be before you today. We appreciate this opportunity.

My name is Wayne Reece. I am an attorney from Atlanta. It gives me great pleasure to be a part of this panel today on behalf of my client, the Motorcycle Industry Council.

We are here to address you regarding the National Recreational Trails Act, which is only a small part of ISTEA, and a program which this act has made possible. That program is entitled, "Project Opportunity."

Project Opportunity is one of the most exciting concepts that we have seen in the State of Georgia involving young people, educational enrichment, job training, environmental improvement, and building recreational trails.

Before you today is a group of people who represent different interests who are coming together to make this program happen. We are utilizing the existing resources made available by the National Recreational Trails Fund Act and by the Job Training Partnership Act to employ a number of young people this summer to renovate, repair, and refurbish trails across north Georgia and in the Atlanta inner city areas.

We feel this program will not only add a tremendous benefit to the environment, but it will create recreational opportunities for a wide range of trail users.

With us today on this panel are the following individuals. We have Doctor Tom Rodgers, who is an Assistant Director of the Corporate Extension Service of the University of Georgia and the former Director of the 4-H Program; Carolyn Stradley, the President of C&S Paving; Nell Jones, who is a long-time environmental activist in the State of Georgia; and we have Mr. Harvey Clanton,

who is the Director of Personnel of the North Georgia Mountains Private Industry Council.

At this time, I would like to defer to Doctor Rodgers.

Mr. RODGERS. Mr. Chairman, thank you for having us here. I apologize for my voice. I'm coming down with laryngitis or something. I don't apologize for my drawl, but I do for my laryngitis.

As Wayne has said, for 21 years of my life, my career, I spent with kids, and if I know anything, I think I know something about kids. I don't claim to be an expert, but I have worked with them an awful lot. And for 15 years I was in charge of the Georgia 4-H program. I want to tell you today how excited I am about this project and about the likelihood that your program can provide funding for projects like this.

I think there are some real unique things about this that we need to be aware of.

One is today, with our young people, we don't provide them enough opportunity to do things that are real. We make up a lot of work for young people, and we have a lot of prevention programs where we go in and try to teach them in a classroom situation. This program is unique in that kids are outside, out of doors, and that is positive. They are away from the TV. They are off the street corner. They are outdoors. And they are doing something positive, and they are doing something that they will be able to see in the future. They are building things with their hands. They are improving things. They are doing work that they can go back later and take pride in and see. That's one of the things that excites me so much about this project.

The other thing is that the project is focused on youth at risk. These are children that are at risk—poor kids. And these are just the kids that need this opportunity. They need summer work, number one. Number two, they need summer work that is productive and useful and something real for them to be involved in. That's the reason that we are so excited about this opportunity.

Let me tell you a little bit about the 4-H program.

We are part of the University of Georgia, part of the Cooperative Extension Service. And the Cooperative Extension Service is tied with the land grant university. We are tied with our entire university system of Georgia. That makes available to us 32 institutions of higher education. We bring them to bear in projects like this.

As a matter of fact, we have three of our sister institutions involved in this project already, and there may be more before it is over.

I think that's a real strength.

The other strength of 4-H is that our program, the 4-H program, is in every State in the country. The Georgia 4-H program in many ways is different from other States, but all States have some consistency and some commonality. If this program works the way that I think it will, it can be replicated in every State in the country because 4-H organizations are set up very similar.

Not all of the 4-H programs are set up with as heavy an emphasis on camping. In our program, camping is very important to us. We camp about 12,000 young people a year. We hire about 95 counsellors from college—outstanding products of our program. These are the kind of kids that we are going to hire—college kids, some

that have graduated from college—that are going to serve as the group leaders and are going to actually supervise the kids that are involved in this project.

They are, in addition to being good supervisors, good role models. I think that's another part of the magic of this particular activity.

We are very heavily involved in outdoor education. We operate the largest outdoor residential education program in the United States. We serve 40,000 elementary school kids in a two-night, three-day experience at our 4-H center. And we are going to use much of the curriculum that we know works, because of our experience in this program.

It is not just building trails. It is building young people. They will have the opportunity to learn about the environment. They will have the opportunity to learn real-life skills like interview skills. And the best thing is they will be developing a good work ethic, and that's important to all of us.

We feel like we have been successful in the past. I can list a few of our alumni. This guy over here, Wayne Reece, grew up in the mountains of north Georgia, and he was a 4-H member, and a district officer. Senator Nunn is a product of our program. Congressman Cardin and Congressman Deal, who is on this committee, is also a very active product of our program.

I could name folks that have gone through our program all over the State that are in positions of leadership. Many of those were at-risk kids.

So I submit to you that 4-H can and does serve young people at risk.

Let me end by saying—and Wayne told us to be brief—there is something magic about a kid having a real-life experience, something that is real and meaningful. There is also something magical that happens, we sense, when we get a young person outside and they start interacting with the environment and developing appreciation of the environment.

This program offers both. I would encourage you to fund this program nationwide, if you possibly can, because I think it is time for us to get our kids out from in front of the TV and get them off the street corners and give them some productive, useful work so they can learn skills.

Thank you, sir.

Ms. JONES. Mr. Chairman and committee members, my name is Nell Jones. Thank you for the opportunity to speak. I am here to give you an environmental perspective on Project Opportunity.

I am a resident of north Georgia—the area where this project will be functioning. I have concentrated my career as an environmentalist on issues affecting this very area of north Georgia.

I serve on the board of several environmental organizations in Georgia—the Georgia Wildlife Federation, the Georgia Conservancy. I'm former president and vice president of Friends of the Mountains.

One of my favorite projects—which I did as a volunteer—was a number one best seller in the Southeast last year. It is entitled, "The Georgia Conservancy's Guide to the North Georgia Mountains." It is a guide to all the beautiful, natural areas—places to hike, camp, go on scenic drives, take the kids, in north Georgia. It

has been very popular. It was to promote awareness of recreational opportunities.

And then I completed this first map ever of Lookout Mountain, which is in Tennessee, Georgia, and Alabama, to show where you can go for recreation up in that area.

So this area is near and dear to my heart, and I care about what happens there, and I particularly care about what happens to the environment in north Georgia, and I fully support Project Opportunity and what it can do for this area, particularly in terms of helping us to improve the condition of the trails now in north Georgia. They are in a state of serious disrepair, particularly after the recent blizzard which has swept through north Georgia. We have had a lot of wash-outs. There are boulders and felled trees which need to be cleared away.

The trails are not in good condition, and letting the 4-H kids come in and work on these trails in north Georgia now would just be a tremendous boon to us in the environmental community, and also would take some of the pressure financially off of those organizations who need to spend their money in land acquisition.

I want you to know that we fully—we, in the environmental community in Georgia—are working together on this project. We are participating and we want you to know that we are involved. We are supportive. And we do hope that you will fund the Trails Act fully so that Project Opportunity will have a chance to function. We are convinced it will be a splendid success in Georgia.

Thank you.

Mr. CLANTON. Mr. Chairman and committee members, thank you for this opportunity to speak to you today.

My name is Harvey Clanton, and I am from Flowery Branch, Georgia, which is a part of the north Georgia Mountains.

I am with the Georgia Mountains Regional Development Center, serving as the director for the Georgia Mountains Private Industry Council, which is funded through the Job Training Partnership Act.

This particular project we are talking about, Project Opportunity, we see as being unique. In terms of Federal funding and in terms of private sector funding it is a joint partnership—a true partnership.

Government often talks about innovation and creativity, but when it comes to innovation and creativity, from our experience, the focus has been for those institutions to maintain themselves. But in this particular project we have something unique and different, and that is the involvement of the private sector.

You have the private sector working together with the local government and with local business persons putting together a project that will benefit students as far as education is concerned.

In the Georgia Mountains region, there are very few technical jobs—very few. This particular project will offer to students high-tech opportunities to learn, using geographic studies, putting together all types of information and modern equipment, but also learning how to safely use motor vehicles for constructing and repairing the trails in our area.

Our Private Industry Council saw this as an opportunity to work closely with this first-time effort because we hope and we think that it will provide our students with a meaningful learning experi-

ence for the summer, but also we'll provide these students with something that they can look back on educationally.

With the lack of jobs in our area, also this would help create a good atmosphere for economic development by folks visiting our areas, leaving the dollars behind to help spur economic growth in our area.

Two years ago our Private Industry Council had the foresight to fund an organization called Hi-Tech. The whole purpose of this organization was teach disadvantaged, at-risk, youth that the school system said were failing. These kids were not expected to succeed.

We put those kids in some classroom situations with some computers and gave them some hope, and we faked them out and taught them geometry, trig, and they didn't know they were doing it—algebra, etc. And they had hope to do it because they were learning how to fly. They were learning how to fly small aircraft. Once they found out that the outcome was that if you succeed and do well in this program you are going to fly this summer—these are poor kids that went back to school saying, "Hey, I'm going to fly." These students—I think it was around 80 percent of the students—increased their reading level two grades over an eight-week period. All of these kids returned to school. Some have graduated while others are still in school and doing well.

It is called giving kids hope, something different—something different than the regular classroom situation that they are continuing to fail in. This Project Opportunity offers that hope. It offers something that these kids can take home and see and go back to after the summer and say, "Look what I did for our forest land. Look what I did for the economic development of our area."

Again, the partners in this program is what is unique. I have never seen—I have been in job training for about 15 years, and I have never seen the type of cooperation that we are getting with the Forest Service, Young Harris College, the American Honda Motor Company, Georgia Conservancy, and other environmental groups.

In order to gain these economic benefits, we will need to develop and maintain our trail system. If we can't do that, then we are going to lose a major part of tourism, a major part of economic potential growth in our region.

Thank you.

Ms. STRADLEY. Thank you for having us today, Mr. Chairman and members of the subcommittee.

My name is Carolyn Stradley, and I am the founder and owner of C&S Paving in Marietta, Georgia. And I can speak from a personal point of view of working in the Appalachian Mountains and finding that hope, that has been addressed to you earlier today, of young students.

I think you have to understand where I come from before you can understand the passion with which I address Project Opportunity, because I was born in a rural community where today you still cannot get in except by walking. I did not know about electricity or running water until I went to school.

I was orphaned at 11 years old, and I made my way by living off of the land—by picking berries, killing rabbits—whatever was necessary.

I was not really aware of hope. We had the 4-H projects in the school that I attended. It gave me motivation and hope.

I moved to Atlanta when I was 13, sometimes sleeping in the back of abandoned cars, taking baths at the bus station.

I went on to get married when I was 15, kicked out of school because I was part of that "community that was not desirable." I had a child at 17, a totally disabled husband at 21, and a widow at 26.

Here I am, without a high school education, and a family of my own to support.

I was able to go back to school, and the only thing I knew how to do was paving, because I had gone to work for a paving company in Atlanta. So I used those skills going back to school at Georgia Tech at night studying civil engineering.

So, as you can see, I can relate to these disadvantaged youths, not only in the rural Appalachian area, but also in the city area. And this program will be extended. Project Opportunity will operate in the Atlanta area also, working on the nature trails.

After working for a paving company for several years, I started C&S Paving on the kitchen table with only a pick-up truck and rented hand tools.

In 1986, through competitive bidding, I was awarded the largest single contract ever let to a female-owned firm by the United States Air Force.

We have just completed 28 acres of paving at the Georgia Dome.

My biggest problem in the private sector is finding qualified help. I want to reach out to these young people and say there is hope, you can have a dream. You can use goals as a bridge to that dream, but somewhere we have got to open that door for these children.

As a part of the transportation community, I derive my livelihood from building roads, streets, and parking lots. But in order to do that, I've got to have trained, qualified people that want to stand out on the street and shovel asphalt and concrete when it is 90 degrees.

For these kids, this is an opportunity for them, because they can transfer the same skills that they learn in building trails, because what they do is they learn self-discipline and self-responsibility. That is what they bring to me as an employer.

Employers like me want and need—need—this kind of finished product. And I encourage you today to look seriously at this particular program, because I believe with everything that is in me that this is a real necessity in today's society.

Thank you very much.

Mr. REECE. Mr. Chairman, we hope this gives you a brief overview of Project Opportunity. As you can see, it covers a wide array of things. There is a lot to be learned from Project Opportunity, not just by the children, themselves. There is a lot to be learned by those of us who are adults and who represent the different communities. The environmental interests and trail user interests are all working together. They are acquiring a better understanding of one another.

I think this project probably encapsulates what America is about more than any other thing that I have seen in a long time.

We would like to encourage you and this committee to continue to support the National Recreational Trails Fund Act. We feel that, with additional funding, this program can be replicated in all parts of the country. The 4-H program is all over the country. Our other partners, the U.S. Forest Service or other agencies are in other parts of the country.

We have a number of major corporations which are currently reviewing Project Opportunity. Some have already come on board as partners and are making major contributions to the program. Others are on the way.

As you know, in the first year, when the National Trails Act was enacted, the authorized funding level was at \$30 million. No funds were available the first year. It was not until the second year, the year that we are in, that \$7.5 million was appropriated. We hope that this amount will be increased in the future, and we would certainly like to ask for it to be included under contract spending authority so that we would have the full \$30 million available to be allocated across the country.

Thank you.

Mr. RAHALL. Thank you very much, each of you.

I just want to begin by commending each of you for your testimony and for the personal work that you have done to make Project Opportunity the success that it is. It is not only an innovative program, but I think one that deserves our support, one that improves not only the land, but improves the lives of our people, as well, and the lives of our youth.

I commend you and the Georgia 4-H Foundation for your efforts in making this program what it is.

I have a rather general question I am going to ask of the entire panel. Each of you may answer as you see fit.

Besides funding considerations, what other obstacles exist that may inhibit Project Opportunity in expanding the work that you do and providing our young people with jobs building and maintaining the trails?

Mr. CLANTON. On a national level, as far as coordinating dollars with the Job Training Partnership Act, that's key, because that is where you are going to get funds to provide the training instructors, and also funds to help those students return to school with some dollars and with some skill.

On a national level, there are 635 private industry councils that do the same thing that I do, that we have there in the Georgia mountains. One of the obstacles has been a lack of funding in both pots, as far as summer jobs and summer enrichment for youth.

Mr. RODGERS. I think one of the other obstacles that we will have to overcome—and I don't think it is one that can't be overcome—is the importance of the supervisor. Our plan is to hire supervisors that are close to the age of the kids—four or five years older. If you look at young kids, they don't look at anyone that is 20 or 30 years ahead. They can't see that far and they can't relate to that kind of person.

But if you have a successful young person who is doing well in college or has their target identified, they'll relate to that kind of person. So if we hire the right kind of supervisors, they will be role

models in addition to being supervisors of their work, and that will be another part of the magic, I think, of this program.

Mr. REECE. Mr. Chairman, I think one of the biggest challenges is for people to have an open mind and for people to have understanding.

The people who first hear about the project and the initial studies, some of them may be reluctant to support it or be a part of it.

Without fail, as these individuals have learned more about the project, they understand the environmental commitment behind the project and the commitment with the children, they become supporters.

And so I think our biggest challenge that we've got to overcome is communication at all levels, and having everyone involved.

Major corporations are seeing this program as a tremendous innovation in helping give them people who have a commitment and who have dedication to doing a good job.

The results that we are going to see in this program as far as elevating the self-esteem of these young people will be tremendous.

Ms. JONES. If you can arrange for us to get the money, we in the environmental community are committed to working in this project and cooperating and making sure that everyone is at the table, included in the important decisions that are made. We feel that ensures that it will be successful.

Mr. RODGERS. Mr. Chairman, let me throw in one other concern.

Mr. RAHALL. Sure.

Mr. RODGERS. When you deal with at-risk kids, not all of them are going to be successful. You are going to have failures.

We have programs in the past where we served at-risk kids, and you have to be happy with every success, and you can't be disappointed with failure. Sometimes the media, sometimes people that want to take shots at you, will focus on the failure. That's one of the dangers, I think, of this program.

Mr. RAHALL. Thank you.

One last question. Is there any coordination between the goals of Project Opportunity and the mandate of the National Recreational Trails Advisory Committee?

Mr. REECE. Yes, there is, Mr. Chairman. In fact, Project Opportunity is the type of program that the National Recreational Trails Advisory Committee recommends and suggests. We are working at all levels with trail user groups, as well as with environmental agencies, to make sure that Project Opportunity fits within those guidelines and suggestions.

Mr. RAHALL. Thank you very much.

That concludes today's oversight hearings.

The subcommittee will reconvene on next Tuesday at 10:00 in this room, 2167. The issue that day will be highway safety issues.

The subcommittee is adjourned.

[Whereupon, at 2:55 p.m., the subcommittee was adjourned, to reconvene at 10:00 a.m. on Tuesday, May 4, 1993.]

PREPARED STATEMENTS SUBMITTED

BY WITNESSES



MILLE LACS BAND OF CHIPPEWA INDIANS

Executive Branch of Tribal Government

STATEMENT BY:

THE HONORABLE MARGE ANDERSON,
CHIEF EXECUTIVE

MILLE LACS BAND OF OJIBWE INDIANS

BEFORE:

HOUSE SUBCOMMITTEE ON SURFACE TRANSPORTATION

ON:

IMPLEMENTATION OF THE INDIAN RESERVATION ROADS
PROGRAM, INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

Good morning, Mr. Chairman. My name is Marge Anderson, and I am Chief Executive of the Mille Lacs Band of Ojibwe Indians, located in east Central Minnesota. I am honored to appear before this esteemed Committee to share with you the views of the Mille Lacs Band on the Indian Reservations Roads Program as administered by the Bureau of Indian Affairs.

Two years ago when the Congress was considering the Intermodal Surface Transportation Efficiency Act, the Mille Lacs Band actively engaged itself in an effort to increase funding for the Indian Reservation Roads Program (IRR). At that point in time, the IRR was funded at an approximate \$80 million, a paltry sum given that a BIA study had concluded that at least \$225 million each year was necessary if the IRR would be brought to an acceptable level of completion by the year 2000. The U.S. Congress and, in particular, this Committee, heard our request and listened. You not only increased the funding levels, but we have just learned that you wisely included Indian tribes in several other parts of the Act. Thanks to your personal commitment, Mr. Chairman, that fund was nearly tripled and tribes are now truly treated as governments under the Act. On behalf of the Mille Lacs Band of Ojibwe, we thank you, Mr. Chairman, for your dedication to improving reservation infrastructure.

But as this Committee is well aware, increasing funding is not an answer in itself to improving some programs. With that monetary commitment from the Congress must follow an administrative commitment to implement the program as the Congress intended. I believe that this Oversight hearing is an excellent first step in exploring methods of improving the IRR Program within the BIA. While ranked administratively as the worst federal agency in the United States, the BIA does have its bright spots, and that holds true in its administration of the IRR Program. The BIA Engineers who work with the Band have been very helpful to us, and we appreciate their hard work. At the same time however, there are several issues which I

Statement by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe

would like to highlight for the Committee's consideration which may lead to improvement of the IRR Program specifically.

Thanks to the economic opportunity afforded us from Indian gaming, the Mille Lacs Band is in the midst of approximately \$16 million in reservation construction. We were the first Tribe in the United States to issue tax-exempt bonds to finance much-needed reservation infrastructure improvements, and are servicing the debt from our gaming revenues. Current construction includes a water tower, water treatment plant, two schools, a clinic, housing, three community centers, two ceremonial buildings, a day care facility, and will eventually begin construction on a new government center. As a result, four roads are currently being constructed on the Mille Lacs Reservation and almost every road is in need of improvement.

With the degree of construction taking place reservation-wide, the key problem for the Band in implementation of the Indian Reservation Roads Program has been communication with the BIA and States. Therefore, the Band has three key recommendations to make to this Committee which would cost very little to implement.

1. BIA Communication With Tribes on ISTEA Provisions:

* Congress should direct the Secretary of Interior to charge the BIA with establishing a Team in the Central Office for the purpose of communicating with all federally-recognized Indian tribes of all the provisions available to them through the ISTEA.

The single biggest problem for the Band is the lack of communication and information from the BIA. Although we tracked the Act as Congress deliberated on it and strongly supported funding increases, the Band and other tribes in Minnesota were never notified of the other provisions available to us from the ISTEA until March, 1993, and in fact, only became aware that tribes were eligible for funding outside of the IRR set-aside two weeks ago in preparation for this hearing. The Band was not notified until April, 1993, that we were eligible for funding from the ISTEA for scenic byways, pedestrian walkways, bicycle trails, and other safety programs when the State contacted us in April. After notification, we immediately inquired to the State about scenic byways monies but were told that our application was too late to be considered this year. That information was of course frustrating, given that neither the State nor the Bureau notified us that funds were available. We appreciate the hard work of the BIA engineers in our State and are aware that they are managing very large workloads. We also appreciate that the State finally contacted us. However, we would have appreciated notification being sooner and believe that perhaps clarification of responsibilities between the States and BIA would be helpful.

If the States are not responsible for informing tribes of their funding eligibility under ISTEA outside of IRR funds, then it would be most helpful if the BIA would organize a Team for the purpose of compiling a package of information on the ISTEA to be set to each federally-recognized Indian tribe. The Band was aware that the BIA had received increased funding from the ISTEA, but that information was verbal and limited to IRR funding and clearly neglected other important aspects of the Act.

Statement by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe

Again, we are grateful to this Committee for including us in these programs which we now plan to participate in. But the Committee should consider, Mr. Chairman, that most tribes cannot afford to employ even one full-time public works employee. While the Mille Lacs Band has one of the most sophisticated Public Works Departments nationwide with fifteen employees, it was your Subcommittee Staff who first informed us of the many different programs under the ISTEA from which we can benefit. Certainly, most tribes nationwide are yet unaware of assistance which they could receive.

2. BIA Communication on Tribal Road Projects:

* Congress should direct the Secretary of Interior to charge the BIA with communicating better with Tribal governments with regard to BIA road plans for road construction on reservations.

The first and most simple task which the BIA needs to complete is to compile an elementary organizational chart with regard to the Indian Roads Program, along with a brief explanation of what the BIA responsibilities are to tribes. After that, it is critical that the BIA engage in better communication with tribes on tribal-specific projects. Most often, the Band receives the message that the funding is available for a particular project on the reservation over the telephone at the end of BIA's decision making process. Given the current massive level of construction on the reservation, new construction must be carefully coordinated and planned months in advance. Consequently, a phone call from the BIA that money is ready immediately for new construction leaves the Band no time to plan for the new responsibilities or to coordinate the new project simultaneously with ongoing projects.

The Band's Public Works staff would benefit greatly if we were given a breakdown of where the BIA is at for each of the Mille Lacs road projects that the BIA is involved with along with a timetable for completion. For example, once the BIA Engineers complete the plans and specifications for BIA roads on our reservation, the Band is the prime contractor and is the responsible for all further project work. However, oftentimes the Band's contract for funds from the BIA as authorized by P.L.93-638, the contracting law utilized by tribes for federal funding, is the first written communication which the Band receives from the BIA with regard to a specific project. Because the beginning stages of our road projects are the responsibility of the BIA, it is extremely difficult for the Band to plan to take over the project and fulfill our responsibilities without adequate notification of a project's progress from the Bureau. A written description of the road construction process and monthly status reports would provide great benefit to the tribes and allow them to plan for carrying out their responsibilities for a roads project.

The BIA engineers whom we work with have been most helpful and are generally accessible to the Band when questions arise. We appreciate their dedication and hard work. However, we are aware that there are currently too few engineers managing too many tribal projects. When the Congress increased the IRR funding, possibly Congress should have authorized some funding for the BIA to conduct seminars for tribes and BIA Engineers to head off these communication problems.

Statement by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe

3. State Communication with Tribes

* Congress should direct the Secretary of the Departments of Interior and Transportation to immediately issue a joint directive to all State governments that they must meet with all federally-recognized tribes within their state boundaries and include them in state planning meetings to be in compliance with the Act.

One of the provisions in the ISTEA provided that states must include tribes in the state-wide road planning process. In February, 1993, the Minnesota Department of Transportation (MNDOT) issued an invitation for the first time to the Band to attend a MNDOT Planning Meeting. While two representatives of the Band attended, we were surprised to learn that the State has been utilizing a BIA employee as the spokes-person for all tribes in our state. While several MNDOT meetings have been held to plan for road construction from ISTEA funds, this was the first which the Band was invited to. Speaking for the Mille Lacs Band, while we appreciate the BIA's participation, we would prefer to speak for ourselves at MNDOT Planning Meetings, specifically given that the law states that states must include "Indian tribal governments" in these planning meetings. State Highway 169, which runs through the Mille Lacs Reservation, was recently expanded from two lanes to four lanes but the state halted construction ten miles south of the Reservation, where it again becomes a two-lane highway. While we understand that the State intends to expand the highway in the future, perhaps the Band could have been helpful at the State Planning Meetings in affecting more timely completion of Highway 169. Because we were not invited to the Planning Meetings until just recently, we now wonder whether we could have been helpful in gaining faster completion of 169 through the Reservation. We are very appreciative that MNDOT is now including tribes on a government-to-government basis. However, Congress should ensure that other States are also carrying out the Provision of the Act which mandates that the States include Indian tribal governments.

4. Expanding the Self-Governance Demonstration Project to include direct ISTEA funding to Tribes, By-Passing the BIA:

In 1988, the Mille Lacs Band was one of ten tribes identified nationwide by the Congress for participation in an initiative known as the Self-Governance Demonstration Project. The Project was authorized after a Senate study concluded that only \$0.14 of each dollar appropriated for Indian tribes ever reached the reservations - the remaining eighty-six cents was expended for BIA Administration. The Band is now in its fifth year of the Self-Governance Project, which allows us to contract with the Department of Interior to administer federal programs previously administered inefficiently by the BIA. In other words, the Band gets its share of administrative funds previously expended by the BIA and uses those funds for direct services.

This project is now being expanded to include the Indian Health Service, an agency within the Department of Health and Human Services. In addition, a legislative proposal was made in the 102nd Congress to expand the project to include Indian programs administered by the Department of Housing and Urban Development. I propose that this Committee consider further expanding this project to allow tribes to contract directly with the Department of Transportation, effectively eliminating the BIA as a middle-man for those tribes who wish to be

Statement by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe

independent, so that ISTEA funds could more efficiently be utilized for direct construction of roads. While we appreciate the technical assistance provided from BIA Engineers, it is in line with the self-governance philosophy of the Band that we would prefer to hire our own engineers to complete plans and specifications, rather than working through the BIA administrative quagmire.

While in F.Y. 93 Annual Funding Agreement provides that the Band will receive its first road construction monies through the BIA, expanding the Self-Governance Project to DOT would mean that the funds could be saved by eliminating the BIA process. Self-Governance Tribes could receive a fair set-aside from each state's allocation from the ISTEA, taking into consideration population served and road mileage. The participating tribes would then contract directly with DOT and be completely responsible for their road projects.

CONCLUSION

Indian tribes have been in a capacity building mode since the 1960s. In the 1970's, the era on Self-Determination officially began. In the 1980s, the Mille Lacs Band pioneered Self-Governance in the Demonstration Project. It is our goal in the 1990s to become economically self sufficient. Revenue from gaming is allowing us to do so. But in order for our dream of a private sector economy on our reservation to become reality, we need a solid infrastructure. In order for our tribe and others across this nation to get the full benefit of the work you completed two years ago in the Act, we simply ask for better communication among the federal, state and tribal governments. We assert that the best way to achieve this end is to have Congress demand this communication from the executive branch in order to ensure strict compliance with the excellent provisions you have made public law in this Act.

On behalf of the Mille Lacs Band of Ojibwe, I thank you for inviting the Band to testify before you today, Mr. Chairman. If there are any questions, I would be pleased to answer them at this time.

Hoop Valley Business Council

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

Dale Risling
ChairmanPRESENTED BY JUAN ARMAND,
COUNCILMAN, HOOPA VALLEY
INDIAN TRIBE**HOOPA VALLEY TRIBE**Regular meetings on 1st & 3rd
Thursdays of each Month

TESTIMONY OF DALE RISLING, SR., CHAIRMAN
HOOPA VALLEY TRIBE OF CALIFORNIA
BEFORE THE
HOUSE COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
OVERSIGHT HEARING ON THE
INTERMODAL SURFACE AND TRANSPORTATION EFFICIENCY ACT OF 1991
APRIL 28, 1993

Mr. Chairman, I am *Dale Risling, Sr., Chairman of the Hoopa Valley Tribe* of California. On behalf of the Hoopa Tribe, I appreciate the opportunity to present testimony today on the Intermodal Surface Transportation Efficiency Act, the frustrating experiences of our Tribe attempting to directly manage road construction on our reservation, and needed amendments to remove costly bureaucratic obstacles.

BACKGROUND ON HOOPA RESERVATION AND HOOPA TRIBAL GOVERNMENT

The Hoopa Valley Indian Reservation, at 90,000 acres, the largest in the State, is located in Northwestern California. The Hoopa Tribal Government operates California's only tribal court, law enforcement program, ambulance program and enforces the State's only Tribal Children's Code. Our Tribe is also one of the first to have entered into a Compact of Self-Governance with the United States.

Prior to 1988 and the passage of the Hoopa-Yurok Settlement Act and, P.L. 100-472, Title III, Self-Governance Demonstration Project, the Hoopa Reservation was mired in constant litigation involving the ownership and management of trust assets on our Reservation. Today, under Tribal Self-Governance, our Reservation fosters an environment for development and problem-solving and our Tribe is participating in many national and State-wide issues. Because of our progress in recent years, despite having the lowest BIA Area Office budget, our Tribal Forestry Program has produced in 1991 the second highest returns on the sale of Tribal trust timber in the Nation, second only to the Portland Area Office. Our Tribe has also been involved for the past few years in developing one of the Indian Health Service's (IHS) only rural hospital models to address health care problems in rural Indian country. We are proud to have completed a modern health care model that, utilizing the concept of Tribal Self-Governance, allows us to expand existing services to our people and the local community. This is being achieved within the existing funds that we receive from the IHS. The primary factor that has allowed us to provide these expanded services is that program design, planning, development and implementation was done by the Tribe at the local level.

The Self-Governance Demonstration Project authorizes Tribes to negotiate the transfer of Interior Department, Bureau of Indian Affairs (BIA) programs, services, functions and activities through a single Annual Funding Agreement to Tribal government control. The Tribal governing body has the authority to prioritize, allocate, and manage these resources.

Since the passage of the Self-Governance Demonstration Project, we have also been working to bring the BIA Indian Reservation Road Program (IRRP) into the our Self-Governance Project. Based on our experience to date, while complying with all Federal road construction specifications, we estimate that we can reduce the BIA's 2 to 3 year design and construction timeframes to only 14 months under the Self-Governance Project. With road construction under the control of the Tribe, we will be better able to coordinate other reservation development efforts with transportation planning, create local employment, and increase the Tribe's administrative capabilities and technical expertise.

It is important to understand that the Self-Governance Demonstration Project was designed by Indian Tribes as a new method of doing business with the Federal Government. The primary focus of the Project is to incorporate the government-to-government relationship between Indian Tribes and the United States into a meaningful process that is founded on the principle of empowering Tribes to manage their own affairs with minimal Federal intrusion. The concept is based on developing a partnership between Tribes and Federal agencies that are responsible for delivering services to those Tribes. Through the application of this government-to-government relationship, Tribes are allowed to develop solutions and design programs to meet their needs and priorities. By including Indian Tribes into the planning, priority and decision-making process, the conflicts between Tribes and the U.S. are significantly reduced; a strong working relationship for solving problems is fostered; and, Federal funds are spent more efficiently and effectively. In addition, Tribes are given the opportunity to develop internal expertise to better implement and provide maximum services from the funds that Congress appropriates each year to fulfill the trust responsibility. These are some of the primary objectives of the Self-Governance Demonstration Project.

In trying to work with the BIA for incorporating the IRRP into the Self-Governance Project, we have, unfortunately but not unexpectedly, experienced continuous BIA bureaucratic obstacles in this effort. As the BIA raised objections to our initial efforts to negotiate IRRP funds, Congress specifically authorized the transfer of BIA roads funds in P.L. 102-184, the "Self-Governance Demonstration Project Act of 1992". Our negotiations over the past two years to determine the Hoopa share of the Road Construction Program were completed last July. The Hoopa Tribe agreed to finance the start-up costs for engineering and design of selected road projects until our Annual Funding Agreement was amended. Today, after eight months of jumping through bureaucratic hoops and not yet having a signed agreement, we have spent approximately \$190,000 of Tribal funds on engineering services and an additional \$50,000 on meetings and related expenses.

**Testimony of Dale Risling
Hoopa Valley Tribe**

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In good faith, the Tribe has responded to the multiple BIA objections to negotiated transfer of roads projects. At each final decision stage, the BIA raised new problems. Our struggle has become a classic example of dealing with an unwilling, unyielding bureaucracy.

Trying to gain Tribal control of the BIA road construction program, as was the intent of the ISTEA, has proven to be very frustrating and expensive for our Tribe, despite the fact that last October the BIA received authorization from the Department of Transportation to spend over \$191 million for implementing the Indian Reservation Roads Program.

On April 16, 1993, we submitted semi-final plans to the BIA for final review and approval. Due to the quality of our work, we have been assured by the BIA Sacramento Area Office Road Engineer that our plans can be approved by the Area Office Roads Engineer over the telephone, without the need for additional formal meetings. We will be submitting a copy of our plans for the record. Since beginning the effort to assume the IRRP, BIA Sacramento Area Office and Central Office personnel have challenged our capability for performing in accordance with Federal highway construction standards, the qualifications of our consulting engineer firm that developed our plans, and has created every conceivable obstacle that has prevented us from being reimbursed for our expenses under this project. With each and every challenge to our efforts by the BIA, we have presented documentation, justifications, and verifications regarding our capability of performing under the requirements of ISTEA. We have resolved each of the bureaucratic challenges. Yet, all this time and expenditure remains fruitless as we await a likely new, yet unforeseen, bureaucratic objection.

Since the beginning of the process of taking over the IRRP for our Reservation, the BIA has required us to comply with the Federal road construction standards and specifications. The Tribe agreed to utilize these standards and specifications without objection. However, while the IRRP was administered by the BIA, the road specifications were certainly not complied with. We will submit for the record various photographs of roads on our Reservation that were constructed by the BIA. As you will on review, the BIA-constructed roads lack the required width, rights of ways and safety devices, such as guard rails. In stark contrast, however, we will also include pictures of various roads projects that were constructed by the Tribe. The primary difference in the quality of road construction between the BIA and Tribe is that we use the roads on our Reservation; therefore, we are more concerned about the quality and safety factors than would be an outside contractor whose primary objective is to make a profit from the project. We are submitting for the record various photographs that demonstrate the difference in road construction, design and implementation of projects administered by the BIA as compared to those administered by the Hoopa Tribe. Obviously, the BIA requires higher performance standards from the Tribe than it does from its own contractors.

Poor BIA road designs in the past have contributed significantly to the high maintenance costs which has escalated the cost of our road maintenance program. To complicate the issue, the BIA road maintenance program was part of the Indian Priority System (IPS). The IPS allowed all Tribes within a BIA Agency jurisdiction to prioritize and vote on the funding levels of various programs. Although the Hoopa Valley Reservation is the largest in California with over 90 percent of reservation roads among Tribes in our Agency, other Tribes were allowed to

transfer designated road maintenance funds into other BIA programs. The result of this IPS reprioritization by other Northern California Tribes was that road maintenance funds were reduced from approximately \$450,000 in 1982 to \$130,000 in 1988. Today, with the road maintenance program included in our Self-Governance program, we have insufficient funds for proper maintenance on these roads, which were poorly designed by the BIA in the first place.

Another problem that we have recently encountered regarding implementation of ISTEA is how the BIA is administering the transportation planning funds. Although we have officially and repeatedly informed the BIA, since 1990, of our interest in assuming responsibility for any transportation planning funds for our Reservation, we have just been informed that the BIA has again let an indefinite quantity contract (IQC) with a private consulting firm for transportation planning for our Reservation. When we requested that our portion of the contract be removed and transferred to the Tribe, the BIA informed us that we are not entitled to such funds. Under the BIA's interpretation, the Tribe will benefit from the contract by being able to work with a local consultant that is selected on our behalf by the prime contractor. We believe that it is a violation of ISTEA and a clear contradiction of Self-Governance principles for the BIA to circumvent Tribal opportunities to manage their own transportation planning. Whether this recent IQC for transportation planning on the Hoopa reservation represents bureaucratic bungling or spite, we once again object to a deaf bureaucracy. We believe that Tribes should be able to directly contract our share of the planning funding so that we can have equal opportunity to develop our internal capabilities to implement the provisions of ISTEA.

And finally, while the California Department of Transportation has been very helpful to our Tribe once we became knowledgeable of our eligibility for highway safety funds, we are concerned that when California developed the grant application guidelines for the safety program, they inadvertently dropped the requirement to include "Indian Tribal Government" in the definition of local governments. When we brought this issue to the State's attention, they were very receptive to correcting this oversight. However, it was only because of our knowledge of the ISTEA provisions that we could have raised this issues with the State. By the State's inadvertent deletion of the language that requires participation by Tribal governments, we have concern that other States may also be deleting this language. We should note that while Tribal Governments do qualify as local governments, it is quite common for the definition of State and local government entities to limit participation to subdivisions of the State, which would disqualify Tribes from participating. We believe that this problem should be carefully monitored by the Congress and Department of Transportation to ensure that States are, in fact, informing Tribes of their eligibility to participate in the highway safety program.

Recommendations:

For the Indian Reservation Roads Program contained in ISTEA to be the most beneficial to Indian Tribes, the Bureau of Indian Affairs and Department of Transportation should:

1. Rewrite the Memorandum of Agreement between the BIA and Federal Highway Administration that administers the Indian Reservation Roads Program. Primary objectives of the new MOA should be to: 1) address the relationship between Tribes, the BIA and Federal Highway Administration in carrying out the IRRP; and, 2) to outline a reasonable, cost-effective process to establish "certification acceptance" status for any Indian Tribe that wants to assume control over their roads programs.
2. Make the Federal Acquisition Regulation (FAR) applicable to Federal projects and for Tribal projects where the Tribe does not have an established procurement procedure. Specifically, Tribes with Compacts of Self-Governance should be able to substitute Tribal procurement procedures in place of FAR to further advance the Demonstration Project.
3. The BIA and FHWA should be directed to work with Indian Tribes to allow Tribal governments to assume management over IRRP when capable of doing so and to assist Tribal Governments develop Tribal procurement procedures if none exist.
4. The BIA should be held more accountable in implementing the IRRP. A measure of BIA performance should be the number of Tribes successfully managing IRRP after officially requesting the opportunity.
5. The Department of Transportation must ensure that States are fulfilling the obligations of ISTEA pertaining to the Safety Program and ensuring that 40 percent of the State's safety funds are used for local governments, "including tribal governments".
6. Clearly prevent the BIA from awarding indefinite quantity contracts with consulting firms and commercial contractors when Tribes wish to assume such responsibilities. Also, ensure that the BIA provides an opportunity for Tribes to assume responsibilities for performing projects that are typically included in such indefinite quantity contracts.
7. That a demonstration project be authorized to allow road construction projects under ISTEA to be provided directly to Tribes from the FHWA to be administered and implemented under the Self-Governance Demonstration Project legislative principles.

Again, on behalf of the Hoopa Tribe, I would let to express our appreciation to the Subcommittee for providing Indian Tribes the authority to participate in the implementation of ISTEA. The provisions of ISTEA have provided Tribes at least the opportunity to manage and implement Federal roads programs. We would support action by this Subcommittee in amending or clarifying the law that it is Congressional intent that Tribes participate in a meaningful way in the implementation of the Act. In addition, we would appreciate any assistance that you can provide in directing the BIA to assist Indian tribes in implementing the IRRP.

I will be glad to answer any questions that you may have.

U. S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Oversight Hearings
on
Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)
including
The National Recreational Trails Fund Act

April 28, 1993

Testimony of Harvey Clanton, Director of Human Services
Georgia Mountains Private Industry Council

Chairman Rahall, Members of the Subcommittee on Surface Transportation, Ladies and Gentlemen, my name is Harvey Clanton. I am Director of Human Services, Georgia Mountains Private Industry Council, Gainesville, Georgia.

I appreciate the opportunity to address this subcommittee. It may be that the National Recreational Trails Fund Act is only a minor part of ISTEA, but it is having a significant impact on our community. As the source of funding for Project Opportunity, the Trails Act is vital to the rebuilding of our infrastructure and to preparing our work force to compete for jobs which are all too scarce. I thank you for your foresight in adopting the Trails Act.

The Georgia Mountains Private Industry Council has a service area of 3500 square miles that spans 13 counties in the northeast corner of Georgia. It's beautiful mountain country with many wonderful lakes. The area is contiguous to the Blue Ridge Mountains with the Chattahoochee River Corridor running through it. The U.S. Forest Service and Georgia Power Company own 40% of this rural area.

The needs of our area stem from its rural make-up. As you might know, there are not many technological jobs in the Georgia mountains. This need not be. In the absence of meaningful high tech work situations, we try to place our students in creative situations where they can learn to develop these high-tech skills. A trained work force can attract quality jobs.

We believe that mountain kids are no different than city kids when it comes to modern technology. They are just as excited as their urban counterparts by electronic games and Nintendo. Yet we are sadly wasting this natural excitement.

In the past, government programs have under-utilized modern technology, opting instead for the safety of the classroom situation to remediate students who have already begun to fail in this sterile setting. The current high school drop-out rate in our service area is 38 to 40 %. We must begin to take different approaches. Our different approach is Project Opportunity.

A Whole New Approach

This year we'll be able to offer a new program that will not only emphasize entry-level working skills but also leave behind a legacy that will enhance the entire area by improving the quality of life and creating an infrastructure that will mean tourism and jobs.

Without the resources of the Trails Act, this approach would not be possible.

Programs like this are rare. Trainees will use old-fashioned hand tools as well as state-of-the-art technology like the Forest Service's palm-top computers and new equipment like Honda's off road vehicles. They will be instructed in the use of sophisticated Global Positioning System (GPS) equipment, and some will use this equipment in trail mapping projects. Trainees will use brain power as well as muscle as they learn to earn a place in tomorrow's work force. They will design environmental impact studies, draw maps, install signs, control erosion, pull stumps and grade trails. For girls, this experience might create a future in a non-traditional occupation.

Project Opportunity is not make-shift work like some summer job programs of the past. It is real employment that yields a tangible product for America's economy while instilling a sense of accomplishment for our future work force.

Two years ago, we assigned 30 students to a training program called Hi-Tek. It encouraged kids to upgrade their basic skills in reading and math by learning how to fly -- Piper Cubs. Did this generate excitement? You bet it did. And what is the result? Reading and math proficiencies of student participants were raised two grade levels, and today, two years later, ALL 30 students are still in school or have graduated.

Educational technology need not be stilted or antiquated. When the imagination is stimulated, the results can be exciting.

The most important component in learning is hope. When you give people hope, they can do anything. Take it away and you have nothing.

Project Opportunity is especially important because it is so well suited for inner cities and for rural communities -- places where summer jobs for youth are particularly hard to find.

Joint Forces

If we are to spend the taxpayer's dollars effectively, we must come up with innovative programs and mechanisms to maximize our dollars and accomplish our goals.

Project Opportunity combines funding from the National Recreational Trails Fund Act with federal Job Training Partnership Act funds, augmenting and maximizing the benefits of both programs. Neither of these programs alone could make Project Opportunity work.

Additionally, the project leverages these federal monies with significant contributions from other sources. Project partners, including business and industry, 4-H, the Motorcycle Industry Council, community leaders colleges, environmental organizations, trail user groups, and state and local agencies all bring their unique contribution to Project Opportunity.

Such partner support will provide some significant components of the program, saving the public resources. For example:

* American Honda Motor Co., Inc. will donate off road vehicles and safety equipment for each counselor and student in addition to

safety training at their facility in Alpharetta, Georgia.

* The Motorcycle Industry Council has served as a major facilitator in bringing the diverse interests together to create Project Opportunity.

* The Georgia Forestry Association will donate and transport many of the construction products for the trails.

* Young Harris College will provide the setting and educational resources for a campus visit and job fair.

This kind of cooperation is vital if we are to stretch our limited resources.

Trails Mean Jobs

Outdoor recreation trails can brighten our area's future in many ways. The PIC serves mountain residents in 13 counties. These 3,500 square miles of rugged beauty could be a resource to lower unemployment and increase living standards.

Here's how. When visitors come to our area to hike, bike, or ride horses or off-highway vehicles, they leave behind dollars where they eat, sleep, shop, buy gasoline, and make other use of our local business resources. A good system of well maintained trails means jobs and other economic benefits for the community.

A Colorado study, for example, points to the \$489 million generated from people using the state's off-highway vehicles and trails. And West Virginia, Kentucky and Virginia -- Appalachian states who share North Georgia's geographic and economic challenges -- are developing a 600-mile trail to attract tourist dollars. The

Hatfield-McCoy System also promises to spark economic development as outfitters, fuel suppliers, and bed and breakfast inns respond to visitors' needs.

In order to gain these economic benefits, we need the well developed and maintained trail system, and we must have a trained and willing work force. We believe that the National Recreational Trails Fund Act and Project Opportunity can be the stepping stones which lead to realization of these potential benefits for our country.

Thank you.

Harvey Clanton
Director of Human Services
Georgia Mountains Private Industry Council
Gainesville, Georgia
(706) 536-3431



California Park and Recreation Society

**P.O. Box 161118 • 3031 F Street, Suite 202 • Sacramento, CA 95816
(916) 446-2777 • FAX: (916) 446-0285**

Implementation Hearing

Intermodal Surface Transportation Efficiency Act

Testimony by:

**Patrice D. Cox
ISTEA Liaison
California Parks and Recreation Society
3031 "F" Street, Suite 202
Sacramento, CA 95816**



California Park and Recreation Society

P.O. Box 161118 • 3031 F Street, Suite 202 • Sacramento, CA 95816
(916) 446-2777 • FAX: (916) 446-0285

Intermodal Surface Transportation Act (ISTEA)

On behalf of the California Parks and Recreation Society (CPRS), I would like to thank the United States House of Representatives, Committee on Public Works and Transportation, for the invitation to testify on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

CPRS would like to praise the intent and flexibility of this new transportation program. ISTEA stresses the importance of developing a national transportation system that identifies all forms of transportation in a unified, interconnected manner. ISTEA reflects a growing recognition that transportation programs, while vital for national mobility and international competitiveness, must also include consideration of the overall environmental context, community values, and community settings.

CPRS has been actively researching and educating its members on the overall ISTEA program. For the past ten months I have represented CPRS on a CALTRANS state task force for the Transportation Enhancement Activity (TEA) component of ISTEA. This task force has been developing the criteria and guidelines for this program. Because of this involvement, CPRS feels we have a thorough understanding of the ISTEA program and would like to share the following comments.

Transportation Enhancement Activities (TEA)

The Transportation Enhancement Activities component of ISTEA is of great interest to, and is being strongly supported by, park and recreation professionals in California. This program sets aside a minimum of 10% of the Surface Transportation Program (STP) for Enhancement activities such as Pedestrian and Bicycle Facilities, Scenic Easements, and Historical Preservation projects, etc.

This program started off a little slow, however, CALTRANS staff and the State Task Force has now developed criteria, guidelines, and application procedures for the program. The overall success of the program cannot be measured since the first round of applications under the guidelines were due April 1.

CPRS is hoping that alternative modes of transportation, such as pedestrian and bicycle facilities and projects that are compatible with the environment will rate high—which is the intent of the program. If this happens remains to be seen. The Task Force developing the criteria for the program was comprised of mostly CALTRANS employees or Regional Transportation Staff members. CPRS, California State Parks and Recreation, and the State Resource Agency, each had a representative on the Task Force. However, it is our opinion a fairer representation of non-traditional transportation people needs to be included in the decision making and project selection process. Right now, an Advisory Council is being formed by Cal Trans which will assist in evaluating this round of applications. This Advisory Council will not be involved in the selection of these projects. It is our hope that a strong contingent of Parks and Recreation and environmentally oriented individuals will be asked to be on this Advisory Council.

Education

A second area of concern is education. The ISTEA act broadens the purpose of transportation funding. Now, we are not only building roads, we are also building transportation



California Park and Recreation Society

P.O. Box 161118 • 3031 F Street, Suite 202 • Sacramento, CA 95816
(916) 446-2777 • FAX: (916) 446-0285

projects that are compatible with and in tune with the environment. In the past, transportation funding has been awarded almost entirely to transportation and public works departments. Today, the players should not only be transportation staff, but also Recreation and Parks and Water Resources Departments, to name a few.

CALTRANS has made a concerted effort to identify agencies who would be interested in the ISTEA program. However, we can't stop there. We must educate these new players and also all agencies administering the program, such as the Regional Transportation Planning Agencies (RTPA). CPRS has a concern that some of the more than forty RTPA's may not fully understand the breadth of the program. CPRS has already held two state-wide educational workshops on ISTEA and is willing to assist CALTRANS or the RTPA's on future educational opportunities for ISTEA.

Competition On An Equal Basis

Cities, Counties and Special Districts in all states must be able to compete for ISTEA funding on an equal basis. In California, only agencies holding master agreements (transportation contracts) with CALTRANS would have been able to apply directly to the Regional Transportation Planning Agencies administering the ISTEA program. Small cities and Special Districts not holding these agreements would first have to apply through their county governments.

They would then compete on a county-wide basis and, if successful, move on as a county project to the RTPA. This process would require that the county select a special district project over a county one. The chances for the special district project being selected are slim.

After many hours of meetings and debate with the Federal Highways Administration and CALTRANS, California was successful in changing their policy. Agencies without Master Agreements can now apply directly to their RTPA. If their projects are selected, either the RTPA, or the CALTRANS District will carry the project through their Master Agreement. Even though this process has been approved, we would encourage the Federal Highway Administration to simplify this administrative process.

National Recreational Trails Act (NRTA)

The National Recreational Trails Act, under the ISTEA program, authorized \$30 million a year. In fiscal year (FY) 1991 there weren't any funds appropriated and in FY 1992 only \$7.5 million was appropriated. CPRS would like to recommend full funding of this program at the authorized amount of \$30 million a year, and funds not appropriated in the first two years.

We would also like to express our concern and ask that the formula being used to disperse funds be re-evaluated. At the very least the Federal Highway Administration should be asked to recalculate the fuel allocations attributed to California and provide a significantly larger amount. The current FHWA give credit for only about 25% of the fuel consumed off the highway in California. At the present time, California receives only 4% of the total amount of funds. This seems grossly inadequate for a state with a very large land base, a large off-highway fuel consumption, and over 10% of the United States population.

In closing I would like to again thank the Committee on Public Works and Transportation for the opportunity to testify on the ISTEA program. As the ISTEA program evolves, CPRS would like to continue to work with you on this new transportation program.

STATEMENT BY DERRICK A. CRANDALL BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON SURFACE TRANSPORTATION, APRIL 28, 1993.

Mr. Chairman and distinguished Members, the American Recreation Coalition appreciates the opportunity to appear before this body today to discuss the importance of several elements of the Intermodal Surface Transportation Efficiency Act of 1991. We appear today on behalf of our own membership, which numbers more than 100 national organizations, as well as on behalf of the Scenic Byways Coalition, a separate 35-member organization we have coordinated since 1987. The Coalition's actions have included: the sponsorship of three national conferences on scenic byways; the production of a widely distributed video explaining the scenic byways concept; and close work with this subcommittee and the Senate during the design of the National Scenic Byways Program.

Recreation is a large and growing economic force in our nation, accounting for more than \$300 billion annually in consumer expenditures, or 7.7% of total personal consumption. These expenditures range from purchases of bicycles and recreation vehicles, boats and skis to payments for services ranging from whitewater guide services to camping fees, from tennis lessons to greens fees. According to a recent survey performed for us by Peter Hart and Associates, 77% of all Americans view recreation as an important ingredient of a quality lifestyle.

Virtually all recreation activities depend upon mobility, which is why the recreation industry has such high interest in the work of this subcommittee. And we are increasingly aware that travel is often, in itself, a recreation form. Studies begun in 1960 and conducted at five year intervals by the federal government have documented clearly that driving for pleasure ranks near the very top of all American recreation pastimes. With a nation as diverse and spectacular as ours -- with tremendous natural and cultural assets -- roadways provide incredible opportunities as we travel to and from destinations.

The widespread, continuing interest in driving for pleasure sparked a recommendation by the President's Commission on Americans Outdoors in 1987 that the nation create a system of scenic byways to showcase and to protect roads with outstanding recreational, cultural, scenic and historic resources. As one of the 15 members of the commission, I felt a personal obligation to work towards the realization of this dream and have found tremendous personal satisfaction in the progress made to date.

In 1987, there were only a handful of active state scenic byway programs and virtually no federal activity. In 1993, more than 75% of the states have scenic byway programs underway, including the wild and wonderful state of West Virginia. West Virginia, in fact, secured \$124,000 under the interim scenic byways grant program which is being used to improve the quality of two existing scenic routes -- Highland Scenic Highway and Midland Trail -- as well as continue the development of the state's scenic byways program.

STATEMENT BY DERRICK A. CRANDALL -- Page Two

In state after state, you will find these "roads Americans love" marked on the official state highway maps and featured in the state tourism booklets. At the federal level, we have a National Forest Scenic Byway System comprised of more than 110 routes and a Bureau of Land Management Back Country Byway System of 57 routes, each created and operated in cooperation with state, local and private partners and collectively drawing millions of visitors annually. And the Federal Highway Administration has been marvelous, working closely and cooperatively with tourism, recreation, conservation and cultural interests -- all non-traditional constituents of the agency. The new National Scenic Byways Program created by ISTEA is evolving rapidly, and scenic byways efforts are also being aided by other FHWA-administered programs.

We would not be here today, though, if all of our message to you was positive. There are real concerns which we urge you to address at the soonest opportunity.

Our greatest concern involves the funding of scenic byways projects under both the interim and permanent grant programs created by ISTEA, under section 1047. The grants created under this program are awarded solely according to merit, and not by formula. We support this strongly, especially in light of the small size of the program. Yet in the final hours of consideration of the legislation in conference, scenic byways grants were tied to the section 1013 Minimum Allocation provisions. For more than 20 states who are net donors to the Highway Trust Fund, this has resulted in substantial confusion, at best, and a financial disincentive to participate, at worst.

Simply put, approximately 23 states risk losing dollar-for-dollar in Minimum Allocation funds any moneys they receive under the scenic byways grant program. Unfortunately, the picture is not black and white. Various "equity adjustment" provisions of ISTEA (Minimum Allocation, Donor State Bonus and Hold Harmless apportionments) make the situation different for literally every state every year.

What is clear is that the uncertainty and likely losses have had a chilling effect on several states, including California. Our state affiliates have been told that the state is simply not going to undertake the effort to prepare applications for funds which, even if they are successful, will come with far more limitations on use than the funds which the state would likely be force to give up. Frankly, we are hard-pressed to argue with this logic.

We ask your help in removing the merit-based scenic byways grant program from the provisions of section 1013, and thank you in advance for your help.

We also want to alert the committee to another problem. The applications for the scenic byways grants for this fiscal year total \$31.4 million; only \$10 million will be available. The quality and quantity of the applications received under this new program -- and the fact that many of the proposals involve projects with partners willing to provide far more than the normal 80/20 ratio of funding -- clearly suggest that consideration should be given to a modest expansion of the program, either under ISTEA or its successor.

STATEMENT BY DERRICK A. CRANDALL --Page Three

Finally, we want to express concern that the pace of the permanent scenic byways program is slower than we had originally anticipated. A part of the problem stems from the deletion of certain provisions of the comprehensive scenic byways legislation introduced in the 102nd Congress by Representative Oberstar and Senator Rockefeller when the provision was incorporated into ISTEA. Simply put, FHWA was faced with a bigger task than we had anticipated "to fill in the blanks" of the program. Its efforts were further complicated by severe restraints on the operations of the advisory committee created under the law. Not only was the appointment of the committee delayed, but its ability to meet was limited by a ceiling on total Department of Transportation advisory committee expenditures.

We are convinced that the scenic byways program created by this committee will prove to be one of the most popular and significant new ideas under ISTEA. We thank you for your support and ask your help in removing barriers to full effectiveness of the program.

In closing, we will not repeat the messages of other witnesses here today about other important ISTEA provisions. We support the enhancement and recreational trails fund sections of the act enthusiastically, and urge changes that will allow the trails fund, in particular, to operate as intended. We also would underscore the importance of the Federal Lands Highways Program, which plays an increasingly important role in assuring safe, enjoyable access to the one-in-three acres of our nation which are administered by the federal government in trust for the American people.

Thank you for this opportunity to share our views and concerns.

Derrick A. Crandall, President
American Recreation Coalition
1331 Pennsylvania Avenue, NW, Suite 726
Washington, D.C. 20004
202-662-7420
202-662-7424 FAX

Scenic BYWAYS



Contact:
American Recreation Coalition
1331 Pennsylvania Avenue, NW
Suite 726
Washington, D.C. 20004
(202) 662-7420

SCENIC BYWAYS COALITION

AMERICAN AUTOMOBILE ASSOCIATION
AMERICAN BUS ASSOCIATION
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AMERICAN HOTEL AND MOTEL ASSOCIATION
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AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS
AMERICAN YOUTH HOSTELS, INC.

AASHTO

BALL, JANIK AND NOVACK

(representing Oregon Dept. of Transportation)

BICYCLE FEDERATION OF AMERICA

BUREAU OF LAND MANAGEMENT

CONFERENCE OF NATIONAL PARK CONCESSIONERS

EXXON USA

FEDERAL HIGHWAY ADMINISTRATION

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RECREATION VEHICLE INDUSTRY ASSOCIATION

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American Recreation Coalition

Dedicated to the protection and enhancement of everyone's
right to health and happiness through recreation.

SUSTAINING MEMBERS: Aegis Group • America Outdoors • American Fishing Tackle Manufacturers Association • American Motorcyclist Association • The Coleman Company, Inc. • Conference of National Park Concessioners • Dometic Sales Corporation • Family Motor Coach Association • Fleetwood Enterprises, Inc. • Good Sam Club • Hehr International Inc. • International Snowmobile Industry Association • Jayco Inc. • Kampgrounds of America, Inc. • National Association of Canoe Liverys and Outfitters • National Association of RV Parks and Campgrounds • National Campers and Hikers Association • National Forest Recreation Association • National Marine Manufacturers Association • Recreation Vehicle Dealers Association • Recreation Vehicle Industry Association • Shurflo • Specialty Vehicle Institute of America • Walt Disney Company • Winnebago Industries.

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1/93

Suite 726 • 1551 Pennsylvania Avenue, NW • Washington, D.C. 20004 • (202) 682-7420 • Fax (202) 682-7424



**STATEMENT OF THOMAS O. EDICK
FEDERAL LANDS HIGHWAY PROGRAM ADMINISTRATOR
FEDERAL HIGHWAY ADMINISTRATION
U.S DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
APRIL 28, 1993
STATUS OF THE FEDERAL LANDS HIGHWAY PROGRAM**

Mr. Chairman, Members of the Committee, thank you for giving the FHWA the opportunity to report on the status of the Federal Lands Highway Program (FLHP). Federal lands highways are crucial to the U.S. public lands system, providing vital links to the many different types of Federal lands, including our national parks and national forests, as well as the Indian reservation system. As I will explain in more detail in a few moments, while FLHP faces great challenges in the years ahead, we are working hard to meet those challenges.

Program Created

The FLHP was created by the Surface Transportation Assistance Act of 1982 (STAA). Prior to the enactment of the STAA, the different categories of roads serving the various Federal lands were not well coordinated. As a result, these roads were not well understood as a total system, nor were they recognized as part of the Nation's overall transportation system. The STAA brought together, for the first time, a consolidated and coordinated long-range funded FLHP consisting of forest highways, public lands highways, Indian reservation roads, and park roads and parkways. The primary purpose of the Federal lands highway system of public roads is to serve the transportation needs of Federal lands, which are neither a State nor a local government responsibility. The Federal lands highway

system of roads serve recreational travel and tourism, protect and enhance natural resources, provides sustained economic development in rural areas, and provides needed transportation for Native Americans.

The Federal Lands Highway System

The Federal lands highway system comprises nearly 80,000 miles of public roads and almost 3,500 bridges and tunnels. Federal lands highways serve as the principal public roads connecting and serving over 700 million acres of public lands, forests, national parks, trust lands, and reserves. Nearly one-half (30,000 miles) of these Federal lands highways are considered outstanding scenic roads, the majority of which are considered America's premier scenic byways. Many Federal lands highways were constructed between 50 to 70 years ago and some even have historic designation.

The system may be broken down into various categories. First, there are over 8,000 miles of national park roads and parkways with over 1,400 bridges and tunnels under the National Park Service's (NPS) jurisdiction. Next, the Indian reservation road system consists of 45,000 miles, of which 20,000 miles and some 700 bridges are owned by the Bureau of Indian Affairs (BIA), and the remaining 25,000 miles are under State and local governments. The 25,000-mile forest highway system (with 1,400 bridges) is principally under the jurisdiction of State and local public authorities. Not included in this inventory, nor part of the FLHP, are 400,000 miles of Federal non-public administrative and land access management roads and trails, which connect to the Federal lands highway system.

FLHP Funding and the ISTEA

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made a

structural change which reduced the four program categories into three by combining the forest highways and the public lands highway categories into a single public lands highway element. Even though these two categories were combined into a single category, in effect the forest highway program was continued with 66 percent of the authorized funds to be allocated based on relative National forest transportation needs, and 34 percent to be administered as a discretionary program.

The ISTEA authorized \$371 million for the FLHP in FY 92 and \$446 million (average) for each of the fiscal years 1993 through 1997.

Implementing ISTEA Provisions

The FHWA administers the FLHP primarily through its headquarters Federal Lands Highway Office and its three field divisions. Longstanding partnerships with the Forest Service (FS), NPS, BIA, and Bureau of Land Management (BLM) have been the hallmark of coordination and cooperation. Some interagency agreements, with minor changes from time to time, have been in existence for over 75 years. With this governmental and technical infrastructure in place, the agencies have continued to respond and carry out a coordinated program as envisioned in the STAA and carried forward in the ISTEA.

Meetings

Following the enactment of ISTEA, the Federal Lands Highway Headquarters and field divisions held numerous meetings with the Federal Lands agencies and various State highway agencies. These meetings served to inform those agencies of changes in FLHP requirements and to reach agreements among them on implementing the ISTEA provisions. In cooperation with other Federal agencies, we also sponsored and participated in

conferences to discuss strategies to improve transportation for economic development, travel and tourism, outdoor recreation, resources management, scenic byways, and land use preservation.

More recently, our FHWA offices have been cooperating with the BIA to jointly sponsor four National Tribal Leaders Transportation Meetings. Also, we are participating in a Transportation Research Board conference to explore solutions to Native American transportation and economic development problems. All of these meetings are intended to improve dialogue with Indian tribal governments, to discuss Indian transportation issues, share information on the Indian Reservation Roads program, and explain the other transportation and economic funding opportunities provided by ISTEA.

Forest Highways

The interim guidance for administering the forest highway program was issued December 26, 1991. This guidance provided for continuing with the previous forest highway program regulations and procedures. We plan to issue a notice of proposed rulemaking to implement those ISTEA provisions affecting the Forest Highway portion of the program in the near future. The BLM has been invited, for the first time, to participate in forest highway tri-agency program meetings between the FS, State highway agencies, and the FHWA. Over \$89,900,000 was allocated in FY 92 and \$109,200,000 will be allocated in FY 93.

Indian Reservation Roads

There are several new provisions in ISTEA that pertain to the Indian reservation roads program. We have jointly developed interim guidance for implementing those

provisions setting aside 2 percent of the Indian reservation roads funds for Indian tribal governments to undertake transportation planning under Indian Self Determination and Education Assistance Act procedures. The ISTEA permitted Indian reservation roads funds to be used for sealing paved roads owned by the BIA, of which approximately \$8 million was used in FY 92. The ISTEA also provided that a minimum of one percent of the apportioned highway bridge replacement and rehabilitation (HBRR) funds be reserved in States having Indian reservation road bridges and transferred those funds to the BIA. The Indian Reservation Roads Interagency Agreement between FHWA and BIA was amended to incorporate the HBRR provisions on August 7, 1992. Also, interim guidance on use of IRR funds was issued June 30, 1992. Over \$152,000,000 was allocated in FY 92 and \$181.4 million will be allocated in FY 93.

Park Roads and Parkway Funds

Interim guidance on the use of park road and parkway funds was issued June 30, 1992. The NPS has taken the lead in undertaking the study, required by § 1050 of the ISTEA, of alternate transportation in parklands. A draft report is to be completed by June 1993. Also, the shale oil modified asphalt study test strip provided for under Section 6016(d) will be constructed in FY 93 in the Grand Teton National Park. Over \$75,500,000 was allocated in FY 92 and \$81,000,000 will be allocated in FY 93.

Public Lands Highways Discretionary Funds

The administrative public lands highway discretionary funds procedures were adjusted to reflect the new provisions in § 1032 of the ISTEA. Some of the States, including two of the 11 Western States, with three percent of the total United States public lands, elected not

to apply for public lands highway discretionary funding. We attribute this reluctance to those provisions in § 1015 that require the States' hold harmless allocations to be reduced if a State received public lands highway discretionary funds in the previous year. For the first time, as provided in the ISTEA, the FHWA allocated funds in FY 92 and FY 93 to cover the BLM's administrative costs related to the public lands highway program. Over \$45 million in public lands highway discretionary funds were allocated in FY 92, and we have allocated \$60.6 million in FY 93.

Section 1032 of the ISTEA provided for the development of transportation planning procedures for the FLHP. Also, § 1025 of the ISTEA required that all Federal Lands Highway projects be included in the Statewide Transportation Improvement Program (STIP). Interim procedures were issued in June 1992 for the STIP submissions. The FHWA is cooperating with the NPS, BIA, and FS in developing transportation planning procedures which include coordination of Federal land management and transportation plans with statewide transportation planning.

The FLHP safety, bridge, and pavement management systems are also required by § 1032. Concepts and procedures are currently under development. They will be coordinated and similar to those required for Federal-aid highways. Section 1032 also requires a study to determine if the method of allocating FLHP funds is meeting the relative transportation needs of the Federal lands served. This study is underway; we plan to complete it by December 18, 1993.

Taken as a whole, the ISTEA made several adjustments and placed many new requirements on the FLHP. As difficult and resource demanding as it may be, we are

pleased to report that there has been a cooperative Federal agency effort in successfully moving the FLHP forward while meeting the changes and challenges.

FY 1994 Budget

The Administration's FY 94 budget proposes an increased authorization for the FLHP of \$36 million. Of this, \$23 million would be applied to the park road and parkway program. With increased authorization levels in FY 94 through 97, the total of proposed funding increases for the FLHP would be \$577 million with \$318 million (55 percent) invested in the park road and parkway program. This is a 22 percent program increase over the ISTEA authorization levels.

Conclusion

Mr. Chairman, I would like to conclude my testimony by expressing our appreciation for the Committee's interest and support in the Federal Lands Highway Program. I thank you for this opportunity to appear with our partner Federal agencies and present, for the first time, coordinated Federal lands highway testimony. We look forward to working with you and your staff as we continue to implement the ISTEA. Our Nation takes great pride and enjoyment in our Federal lands. The FLHP is an important transportation investment for their preservation and the sustained enjoyment of future generations.

STATEMENT OF DENIS P. GALVIN, ASSOCIATE DIRECTOR, PLANNING AND
DEVELOPMENT, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR,
CONCERNING IMPLEMENTATION OF THE INTERMODAL SURFACE
TRANSPORTATION EFFICIENCY ACT OF 1991.

April 28, 1993

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with information on the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), as it affects Interior programs.

Currently several bureaus in Interior have programs involving ISTEA. The Department's land-management responsibilities involve the construction and maintenance of roads on lands that are administered by various bureaus, and the Department's resource conservation and outdoor recreation responsibilities involve comprehensive transportation planning assistance.

Attached to my statement is a more detailed explanation of each Interior bureau's concerns with ISTEA. I am accompanied here today by representatives of the Bureau of Indian Affairs, the Bureau of Land Management, and the Fish and Wildlife Service. In addition to the National Park Service, each of these Interior bureaus has an interest -- existing or potential -- in the provisions of ISTEA, summarized as follows:

National Park Service

The Parkways and Park Highways Program is authorized in the Act at a total of \$486 million over six years. Parkways and Park Highways are funded as part of the Federal Lands Highway Program administered by the Federal Highway Administration (FHWA).

In addition, the National Park Service provides technical assistance to States and communities in Transportation Planning. In response to ISTEA, we are assisting in planning intermodal transportation networks that include bicycle paths and pedestrian trails. Response has been enthusiastic to a series of regional workshops we cosponsored to help in the development of community trail systems.

By May 2, eleven (11) regional workshops, Transportation Planning for Livable Communities will have been conducted throughout the nation. Through these workshops (which the National Park Service is cosponsoring with the Federal Highway Administration, the Environmental Protection Agency, The Surface Transportation Policy Project, The National Trust for Historic Preservation, Scenic America, and the Bicycle Federation of America, Inc.) close to 4000 people from around the nation will have learned about ISTEA and some of the changes that are occurring nationwide in the delivery of transportation services as a result of ISTEA.

The success of the conferences shows that there is a great deal of interest on the part of the public and those who have not been traditional players in transportation. The combination of people attending these workshops is exciting as transportation planners and officials sit and talk with citizens and other public officials about transportation planning and where states and communities will be in five, ten and twenty years regarding transportation. The people involved in the conferences represent bicycling and pedestrian interests, trail/rail-trail and greenway interests, historic preservation and scenic interests, growth management interests, air quality and other environmental interests, as well as public policy and decision makers both inside and outside the arena of transportation.

The National Park Service will also cooperate with States as they designate Scenic Byways under ISTEA. If park roads or parkways are so designated, we will provide interpretive materials to assist the States in guiding travelers.

Bureau of Indian Affairs

The Indian Reservation Roads system includes those roads that are open to the public and are located within or provide access to an Indian reservation or Indian trust lands, or restricted Indian lands. Public access to Indian and Alaska Native Villages, groups or communities in which Indian and Alaska Natives reside,

who the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians, are also IRR. The IRR system has approximately 49,000 miles of public roads within or providing access to Indian reservation lands. Approximately 21,000 miles of the 49,000 miles are Bureau-owned roads.

The Indian Reservation Roads Program funding has been increased within ISTEA. The ISTEA funds provide for the planning, design, construction and the improvement of IRR. The ISTEA authorizations to date have helped the IRR program through the funding of tribal transportation planning under P.L. 93-638, establishment of a scenic byways program, a bridge replacement and rehabilitation program, and the establishment of LTAP Centers for training of Indian tribes in transportation related programs. The Bureau in cooperation with FHWA is hosting four regional meetings for tribes and Alaska Native Villages on implementation of ISTEA during the months of March through June 1993. Funding is distributed to 12 Area offices based on an allocation formula as recommended by tribal leaders and approved by the Deputy Commissioner of Indian Affairs. The attached report provides details of the IRR program implementation under the ISTEA.

Bureau of Land Management

The Bureau of Land Management had historically not been able to participate in highway act funding, however the ISTEA made several changes that permit BLM to nominate projects, through local officials, for funding under various provisions of the act. BLM specifically is participating in ISTEA activities by coordinating through State Surface Transportation Programs on Scenic and Backcountry Byways, recreational and interpretive projects related to public roads, and recreational trails. Under ISTEA, BLM is to work with the FHWA and the States in the creation of a BLM-State designated system that would include adjoining state and local roads that provide access to BLM property.

The Bureau of Land Management has been actively pursuing implementation of ISTEA. Nationally, the Bureau is participating on the Advisory Committee for Scenic Byways and is working with FHWA on the establishment of important highways that provide access to BLM lands and resources. On a local basis the Bureau is coordinating with State Departments of Transportation and local governments on transportation network needs and on projects for inclusion under the various ISTEA categories.

Fish and Wildlife Service

The Department and the Fish and Wildlife Service are working with the FHWA and the Administration on the possible inclusion of National Wildlife Refuges in the Federal Lands Highways Program, covering public access to refuges that is consistent with other Federal lands.

This concludes my prepared remarks, Mr. Chairman. I and my colleagues would be pleased to respond to any questions you may have.

NATIONAL PARK SERVICE PROGRAMS

April 28, 1993

The National Park Service is involved in implementing the Parkways/Park Highways, Transportation Planning, and Scenic Byways Programs under the Act.

Parkways and Park Highways

The National Park Service (NPS) road and bridge infrastructure consists of 7,926 miles of park roads and parkways, and 1,460 bridge and tunnel structures. As a point of reference, this compares in magnitude with the State of Arizona's road system. In contrast to Arizona's, however, the NPS system is geographically scattered throughout the United States and its Territories. The current replacement value of these Federally owned NPS roads, bridges and tunnels is estimated at \$25 billion.

Since 1983, major repairs and rehabilitation of National Park System roads have been funded through the Federal Lands Highway Program administered by the FHWA. The 1982 Surface Transportation Assistance Act provided Highway Trust fund authorizations of \$75 million in fiscal year 1983 and \$100 million each year thereafter through fiscal year 1986. The 1987 Surface Transportation and Uniform Relocation Assistance Act reduced the funding authorization level to \$60 million per year for fiscal years 1987 through 1991. (The amount was further impacted in fiscal years 1986 and 1990 by the deficit reduction actions.) Public Law 102-240, ISTEA, reauthorized the Parkways and Park Highway Program for six years, as follows:

FY 92 -	\$ 69 million
FY 93 -	83 million
FY 94 -	83 million
FY 95 -	83 million
FY 96 -	84 million
FY 97 -	<u>84</u> million

Total - \$486 million

For the FHWA and the National Park Service to continue to maintain the substantial Federal investment in park roads and bridges, adequate funding for the Parkways and Park Highways Program is essential.

Transportation Planning

For Interior and the National Park Service ISTEA provides a place at the "transportation planning and decision-making table" to discuss the issues important to us and develop transportation

solutions that complement and enhance the nation's communities and environment. The Park Service's policy on trails, Trails for All Americans (developed in the summer of 1990), sets guiding principles for the establishment of a national system of trails. These principles look at trails as more than recreation opportunities. Access to community resources via a system of trails and greenways is part of the vision of Trails for All Americans. Paramount is the integration of trails into communities and an understanding of their role in providing a transportation network for pedestrians and bicyclists as an alternative to the automobile. ISTE A recognizes the need for alternatives to the private auto and requires that communities and states address the issue of intermodal transportation systems that include pedestrian and bicycle systems. ISTE A is an important tool for helping communities and states develop trail systems that are integrated into communities providing an alternative that is connected to the community's overall transportation system.

The National Park Service's Rivers, Trails and Conservation Program has been co-sponsoring a series of regional workshops throughout the country to educate people on ISTE A and how ISTE A can be utilized to help in the development of community trail systems. As part of these workshops we discuss the range of opportunities available to states and communities to develop trail and greenway systems. Many people are under the impression that it is only the Transportation Enhancement program of ISTE A that would allow or support trail development. Although the Enhancement Program is important in this regard, if communities and states recognize trails as an element for solving transportation problems and call for trail development within their long-range planning activities, then other areas of ISTE A may be utilized for trail system development. Through the conferences we have worked to ensure that people understand this and also the importance of the planning and the need to develop plans that recognize and integrate trails into the transportation mix for a state and community. Community trail systems can truly serve a transportation function and ISTE A provides a valuable tool for planning and developing them.

Another area of ISTE A which we have followed has been the National Recreation Trails Fund. Although this program is administered by the Federal Highway Administration (FHWA), Interior is required to act as an advisor and consultant to FHWA. Staff from our Recreation Resources Assistance Division have worked closely with the Department's coordinator and in turn with FHWA officials. It is a new and potentially very important source of funds for recreation trails. Because each state will determine how the funds will be spent and since states are only now spending their first appropriation, it is difficult at this time to assess the impact the fund is having.

The planning required under ISTEA is one of the most exciting elements of the Act. It recognized the need for transportation planning to be part of an overall view of how we want our states and communities to look twenty years from now. ISTEA planning is critical to the success of what the Congress has called for in ISTEA. If the nation is truly going to solve its transportation problems and move people and goods efficiently as well as protect the environment, then an intermodal system is necessary that is planned for not in a vacuum but in an arena that seriously considers the resources, both man-made and natural, and the values of a community before transportation decisions are made. The planning required under ISTEA is meant to do that and if done properly will work on the behalf of all Americans and be an asset to our environment.

Scenic Byways

The National Park Service has participated in various aspects of the Scenic Byways program since its inception and supports the concept. That concept provides a system by which road corridors on the State highway systems and roads on other public lands can be recognized and protected to provide the public with an expanded opportunity for appreciation of America's natural, cultural and recreational resources. The Service has not established a separate system of Scenic Byways or nominated park roads or parkways to be part of the National System. Rather we view park roads and National Parkways as connecting links within State or National Scenic Byways systems. Park roads and National Parkways were conceived and designed to have the physical characteristics of Scenic Byways. One exception is that, as integral parts of National Park units, the road corridor is essentially already protected by fee ownership of the lands through which the roadway passes. Of course, commercial use of the road and the corridor would not be in accordance with policies and authorizing legislation for National Park units.

The Director of the National Park Service is a member of the Scenic Byways Advisory Committee as provided in the Intermodal Surface Transportation Efficiency Act of 1991. His designee has been fully involved with the work and responsibilities of the Committee. Its report is scheduled to be completed this fiscal year.

After the criteria and guidelines are completed by the Advisory Committee and subsequently adopted by the Federal Highway Administration, the National Park Service would participate in the program by working with the States to identify appropriate park roads and parkways as Scenic Byways.

INDIAN RESERVATION ROADS

PROGRAM HISTORY

On January 6, 1983, the Surface Transportation Assistance Act (STAA) of 1982 was enacted and authorized the creation of the Federal Lands Highway Program (FLHP). The FLHP is a coordinated Federal roads program which addresses access needs to and within Indian and other Federal Lands. The FLHP follows the same uniform procedures as roads on the Federal-aid routes including transportation planning, project design, construction, and maintenance. The Indian Reservation Roads (IRR) program comes under the FLHP.

Prior to the 1982 Surface Transportation Assistance Act (STAA), the IRR program was funded under the Department of Interior Appropriations from the General Fund. The funding in the appropriations varied from year to year making it difficult to develop long-range programs and related staffing plans.

The 1987 Surface Transportation and Uniform Relocation Assistance Act (STURAA) was enacted on March 17, 1987. It continued funding the IRR program, but at a reduced authorization level. On December 18, 1992, the **Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991** was enacted. The **ISTEA** increased program funding authorizations to the IRR program. It also amended the FLHP by expanding program requirements and increasing program flexibility.

On May 24, 1983, an interagency agreement was executed between the Bureau of Indian Affairs (BIA) and Federal Highway Administration (FHWA) for the overall administration of the IRR program. It implemented the 1982 STAA provisions on general procedures for program development, execution, and funding. In this agreement, the BIA is responsible for transportation planning, engineering, construction, and maintenance. The agreement assumed that the BIA and tribal governments would administer most of the program. The FHWA would only undertake a particular project activity upon request of the BIA. The FHWA has overall lead in IRR program oversight, with the BIA sharing this responsibility. The 1983 agreement was amended on August 2, 1992, to incorporate IRR Highway Bridge Replacement and Rehabilitation (HBRR) provisions contained in the **ISTEA**.

FUNDING

The funding for IRR is provided by authorizations contained in the 1982 STAA, 1987 STURAA, and 1991 **ISTEA**. The Acts provided multiyear authorizations which allows Indian tribal governments and the BIA to develop short and long-range Transportation Improvement Plans (TIP) with some degree of realistic certainty. The **ISTEA** authorizations, to date, have helped the IRR program through the funding of tribal transportation planning under P.L. 93-638, establishment of a scenic byways program, a bridge replacement and rehabilitation program, and the establishment of technical assistance centers for training of Indian tribes in transportation related programs. The current authorizations in the 1991 **ISTEA** are for a six-year period (FY 1992 through FY 1997). The IRR Highway Trust Funds (HTF) obligated in FY 1992 are as noted in Table A.

TABLE A

FY 1992 IRR FUNDING AND OBLIGATIONS	
FY 1992 ISTEA Authorization	\$159,000,000
1991 Carry Over (at FHWA)	+ \$ 3,708,749
FHWA Administration	- \$ 4,372,500
FY 1992 Obligation Limitation to BIA	\$157,459,901
FY 1992 Obligations for Design/Construction	\$152,287,441
BIA Administrative, Bridge Inspection and Transportation Planning	\$ 3,521,130
2% Transportation Planning by Tribes	\$ 1,629,082
FY 1992 Unobligated Funds	\$ 22,248

The above authorizations are called contract authority. These are unlike most Federal agency program funds. Contract authority is a special type of budget authority. The funds become immediately available upon apportionment of authorizations from the Office of Management and Budget (OMB), which is generally effective October 1 of each fiscal year. After FHWA receives the OMB's authorization apportionment, the funds (contract authority) are available for allocation. The initial IRR allocations are generally made on the first working day of each fiscal year to the BIA.

Obligation of the funds may begin immediately after they are allocated. The contract authority contained in the above transportation Acts can be obligated without a separate Department of Transportation's Appropriations Act. These obligations are commitments to reimburse the Federal share of a completed project cost. The law provides that adequate obligation limitation be provided for IRR to cover anticipated obligations during a particular fiscal year. This obligation limitation lapses on September 30 of the same fiscal year it is made available. Therefore, unused obligation limitation cannot be carried over from one fiscal year to the next fiscal year. The law requires that any anticipated unused obligation limitation is returned to the FHWA's Office of Fiscal Services by August 1, and redistributed to other programs needing obligation limitation. Relative to the IRR program, the estimated allocated funds that will not be obligated during the current fiscal year (along with equal amounts of obligation limitation) are withdrawn.

Liquidating cash (to pay bills related to obligations) is provided from the HTF. Liquidating cash for each fiscal year is made available through the annual Department of Transportation Appropriation Acts. The HTF is an interest bearing account. Once the funds are withdrawn, the interest being earned on the withdrawn amount stops. Therefore, to maximize the amount of earned interest, only the amount of liquidating cash needed to meet current expenditure needs are withdrawn from the HTF and transferred to the BIA and other Federal agencies.

The IRR is a reimbursable program. The funds are for reimbursement to the BIA and Indian tribes for completed work that was in the approved IRR program. The IRR HTF program is not a grant program. Any savings (contract authority) from completed projects or unused funds may only be used on other IRR projects contained in the approved program. The projects must also be contained in an approved Statewide Transportation Improvement Program (TIP).

ALLOCATION OF IRR FUNDS

At the beginning of each fiscal year, the FHWA's Federal Lands Highway Office determines the amount of available IRR funds, including any prior year unallocated balances. Then the BIA and FHWA jointly develop an overall IRR program funding plan to determine amount of IRR funds for general administration, IRR transportation planning, 2 percent transportation planning, research and development, IRR road sealing, and design and construction. The available funds, along with equal amounts of obligation limitation, are then transferred to the BIA. The BIA allocates the funds based on a Relative Need formula, in accordance with 23 U.S.C. Section 202(d). The allocations are periodically adjusted by the BIA and FHWA to reflect changes in the approved program of projects. The FY 1993 IRR program funding plan is shown in Table B.

FY 1993 IRR PROGRAM PLAN
Table B

Program Activity	
FY 1993 Authorization (ISTEA)	\$191,000,000.00
Less 3% FHWA Administration (Max 3.75%)	- 5,730,000.00
Reserved for FLHP Allocation Study	- 250,000.00
Reserved for LTAP Centers	- 600,000.00
Reserved for CTIP (IRR Research)	- 300,000.00
Unallocated FY 1992 Funds	\$1,060,244.00
Subtotal - Available for IRR Program	\$185,180,244.00
IRR PROGRAM	
Design and Construction	\$170,135,000.00
BIA Administration - Area Offices	\$6,097,000.00
BIA Administration - HQ (DC)	\$500,000.00
BIA Administration - HQ (Albuquerque)	\$1,200,000.00
2% Tribal Transportation Planning	\$3,714,000.00

On June 30, 1992, Interim guidance on the use of IRR funds was issued, which reflects the latest ISTEA provisions. HTF cannot be used for maintenance which is separately funded through the Department of the Interior Appropriations.

NATIONAL MEETINGS ON ISTEA

The Division of Transportation is participating in meetings with other Federal agencies, States and tribes on the implementation of ISTEA. At least four meetings are planned during FY 1993 to specifically emphasize the sharing of information on the IRR program and ISTEA with tribes and Alaska Native villages. The meetings held in Albuquerque, NM, March 9-11, 1993 and Minneapolis, MN, April 20-22, 1993, were very successful. More than 500 tribal leaders and representatives attended the first 2 meetings. Additional regional meetings are planned as follows:

Anchorage Alaska
Portland, Oregon

May 11-13, 1993
June 15-17, 1993

TRANSPORTATION PLANNING FUNDS FOR INDIAN RESERVATION ROADS

Section 1032 of Public Law 102-240, 105 Stat. 1974, the ISTEA amended 23 U.S.C. Section 204, Highways (23 U.S.C.) by adding a new subsection (j) under (b) Projects. "Indian Reservation Roads Planning - Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning." Procedures for Tribal governments to apply for these funds were issued in March 1992. A number of tribes have applied for these funds and are in the process of developing planning documents. During FY 1992, the tribal governments began participating with the States in the development of Statewide Transportation Improvement Programs.

NATIONAL SCENIC BYWAYS AND THE IRR PROGRAM

Under Section 1047 of ISTEA the BIA IRR program has been working with the Federal Highways Scenic Byways program to encourage the participation of Native Americans in the program. The BIA's Division of Transportation participated in a national study to identify possible scenic routes to be considered candidates for classification as scenic byways. Over 2,500 miles of road were identified in the BIA portion of the study.

The FHWA Scenic Byways program has agreed to qualify the identified routes for preliminary designation status making them eligible for participation in the interim program. Participation of tribal governments in this program has been promoted by the BIA. A letter of introduction with a request for designation of contact was sent to all tribal leaders concerning the Scenic Byways program and recreational travel and tourism. The response has been very good with more than 75 tribal leaders responding.

The BIA is represented on the National Scenic Byways Committee by the Chief, Division of Transportation. The BIA has been supporting the inclusion of tribal governments and promoting the cultural and historical aspects of scenic byways designation criteria. Participation in the program will be expanded to come from the tribes working with the BIA through the State. The BIA has established a network with the other Federal Land programs to promote partnerships with tribes in developing scenic byways proposals. Of course, tribes may utilize their own funds for the

establishment of a tribal scenic byways program but limited funding and other pressing priorities make this unlikely. The Division of Transportation has assigned the responsibility of management of the Scenic Byways program to a Transportation Specialist. This position is working with the tribes and Area offices to establish BIA policy and procedures in compliance with national policy. Procedures for applying for these funds have been developed and provided to the tribes. The tribes have been encouraged to work with the States to develop proposals.

IRR BRIDGE REHABILITATION AND REPLACEMENT

Section 144(g) of Title 23 U.S.C. pertains to the IRR Bridge Rehabilitation and Replacement program. A minimum of 1 percent of apportioned bridge replacement and rehabilitation funds are made to the BIA for repair or replacement of IRR bridges. The Federal share is 80 percent, but the ISTEA allows the use of IRR funds to be used for the 20 percent State or local match. The 1983 Memorandum of Agreement (MOA) between the FHWA and the BIA was amended to include the Bridge Replacement and Rehabilitation Program. There have been a number of bridges identified and funded in FY 1992. For FY 1993, approximately 80 bridges will be funded.

LOCAL TECHNICAL ASSISTANCE PROGRAM (LTAP)

Technical centers identified in ISTEA for assisting tribal governments by extending their technical capabilities through technical training have been established. Four Local Technical Assistance Program (LTAP) Centers were established in January 1993. These centers are located in Colorado, Michigan, Montana and Washington State.

EMERGENCY RELIEF FOR FEDERAL ROADS

Section 125 of Title 23 U.S.C. pertains to the Emergency Relief for Federal Roads (ERFO). Section 125 provides ERFO funds for IRR roads that have extraordinary damage as a result of natural disaster over a widespread area or catastrophic disaster that is not caused by lack of maintenance or general deterioration. The Federal share for these funds is 100 percent. After a natural or catastrophic disaster, Indian tribes can request the BIA to apply for ERFO funds through the FHWA for damage sites.

RELATIVE NEED

The Relative Need formula had been under study for a number of years. Under the STAA, Congress directed that IRR funds be distributed in accordance with "Relative Need." The BIA's Division of Transportation obtained the services of an Indian Architectural and Engineering (A/E) firm to assist in the formula development. With the assistance of other Indian A/E firms and in cooperation with the Division of Transportation, the new formula was developed.

Public meetings to present the **Relative Need Study** efforts and to gain insight into the process were held in all 12 Areas. Tribal representatives and Area personnel, as well as the general public, attended these public meetings.

The final report and public meeting results were previously sent to all tribes and to the 12 BIA Area offices. The Assistant Secretary – Indian Affairs, approved a new formula for use in August, 1989. In adoption of the new formula, it was identified that some data in the data files of the road inventory needed updating to assure fair treatment for all Areas. The Area offices were given the opportunity for the last two years to update the Road Inventory data.

The BIA had concluded that the data files which are maintained by the Division of Transportation's Branch of Engineering and Operations, were reasonably satisfactory for use in the formula and, therefore, had retested the formula and developed the funding levels. Each Area office, on a regular basis, is responsible for updating the data used in the fund distribution formula. Therefore, the level of funding developed for each Area is a direct result of data obtained from the Area offices.

The Division of Transportation, with the concurrence of FHWA and approval of the Assistant Secretary – Indian Affairs, have provided to tribes and Alaskan Native villages the contents of the **"Relative Need"** procedures of allocation of HTF. Comments received from the tribes and Alaskan Native villages have been considered and procedures for final implementation were recommended by a committee of Area Road Engineers. Committee recommendations included the transition of the **"Relative Need"** formula over the next three years with full implementation on the fourth year. The transition will combine the new and old formulas for distribution of funds to Areas. This policy decision was approved by FHWA and the Deputy Commissioner of Indian Affairs and distributed to the 12 Area offices on January 12, 1993.

OVERALL FUNDING NEEDS

A **Needs Report** was developed to establish the overall needs of the IRR program. Based on the **Needs Study** approximately \$227 million per year is needed to bring the BIA system to an acceptable level of completion in 25 years. Many of the IRR provide access to the nation's most scenic areas, and are essential to Indian economic development.

Cost to improve the system was based on a plan to upgrade to a standard considered to be equal to other public road systems in the country.

	Current	Standard
Miles Paved	5,100	7,900
Miles Graveled	2,700	4,900
Miles Improved Earth	7,700	7,900
Miles Unimproved	<u>5,200</u>	<u>0</u>
TOTAL	20,700	20,700

The standard requires that all public roads be at least properly drained, with the local roads having the lowest traffic volumes remaining in earth surface. Collectors and arterials require all weather surfaces, with graveling of some and paving of the most important roads with the highest traffic volumes.

A 15-year program appeared unlikely to be adopted, given the importance of other competing national priorities. There appeared little reason for consideration of a period beyond 40 years for reaching the goal, since many other events will occur in that time and reconstruction is forecast to become of major relative importance. Viable decisions, then, are expected in the 20–40 year program range, or a decision not to reach this standard at all. A decision not to reach the standard would result in either enforcement by legal means of State/local responsibility for Indian roads.

A minimum level of \$210 million, similarly indexed, is required to achieve a system meeting reasonable standards in a reasonable number of years (30). The selection of a program level below \$210 million indicates the standard will not be reached, and methods of distributing the scarce funds will be developed. At the five levels considered viable for reaching the selected goal for Indian roads, programs indexed for 2 percent inflation would be in millions of dollars:

	<u>20 Yrs</u>	<u>25 Yrs</u>	<u>30 Yrs</u>	<u>35 Yrs</u>	<u>40 Yrs</u>
1992–95	263	227	210	209	213
1996–99	285	246	227	224	231
2000–03	308	266	246	245	250
2004–07	334	288	266	265	270
2008–11	361	312	288	287	292
2012–15	–	337	312	311	317
2016–19	–	365	338	334	343
2020–23	–	–	366	364	371
2024–27	–	–	–	394	401
2028–31	–	–	–	–	434
2032–35	–	–	–	–	470

In comparison to the human cost, the spending delay between 25 and 30-year programs seems of relatively minor benefit. For this reason, it is believed that the program should be based upon the 20-year or 25-year period to reach the goal, with the decision based upon the relative urgency of Indian economic welfare and empowerment, and of other national goals which may compete for the funding.

Such a program, despite the increase in funding, is a conservative one:

1. It does not include roads on new right-of-way except those with definite plans, which could be built in the next three years.

2. It includes very few of the tremendous mileage needed to serve the Alaskan Native villages as the State develops, a distinct possibility as a portion of the "Pacific Rim."
3. it leaves a very substantial portion (40 percent) of the BIA road system still with earth surface.
4. It does not consider the needs of new tribes recently recognized, or of other tribes seeking recognition which may be recognized in the future.
5. It does not consider the needs in State-recognized Indian reservations, especially in Virginia and New York, which may be included by a policy change.
6. It does not include "maintenance only" roads, on which BIA may assume construction responsibility.
7. It does not include 1,200 miles of the total 2,200 miles of tribal public roads, which tribes can request to be placed on the BIA system.
8. The goal of parity for the current BIA road system would be reached no sooner than 2012, 60 years after recognition of need for a Federal program of IRR construction.
9. Very conservative cost factors and facility life factors were used in calculations.
10. Bridge Rehabilitation and Replacement was not included, under the assumption that Federal bridges should be included in the program along with States.

The IRR construction program should be funded at a level between \$227 million and \$263 million, as a major initiative toward economic development and improved quality of life on the reservations.

All funding provided under the IRR program for FY 1992 Road Construction was obligated. Currently, FY 1993 funds have been provided to the Area offices. It is anticipated that all of the FY 1993 contract authority (\$191.0 million) will be obligated by September 30, 1993. This is based on the latest poll of the Area Road Engineers.

Supplemental Statement on ISTEA for the Bureau of Land Management

Background: The text of ISTEA specifically mentions the Bureau of Land Management (BLM) in several provisions, including Backcountry Byways as an important segment of the Scenic Byways Program, the Federal Lands Highway Program, the Surface Transportation Program, the Recreation Trails Program, and recognizes the role of BLM in promoting tourism and rural economic development.

The ISTEA also revised the definition of a public lands highway, so that it increases the number of roads accessing BLM administered lands that are eligible for funding under the Federal Lands Highway Program (FLHP).

The ISTEA requires that funding for specific administrative costs related to the FLHP be transferred to BLM from the Federal Highway Administration (FHWA).

In addition, a colloquy among Senators Burns, Moynihan, and Symms in the June 12, 1991 Congressional Record specifically urged "creation of a BLM-State designated system that would include adjoining State and local roads that provide access to BLM property.

Recreational Trails Program: ISTEA calls for the development of a Trails Trust Fund for projects on a Statewide Comprehensive Outdoor Recreational plan for both motorized and non-motorized trails. The types of BLM trails that would be eligible for funding include hiking, bicycling, equestrian, motorcycles, snowmobiles, ATV, and 4-wheel drives trails.

BLM's manages over 23,800 miles of trails of which more than 5,900 miles are interpretive, hiking or equestrian.

BLM recognizes the need for coordination among the State and other land managing agencies in the development of trail project proposals under this and other ISTEA provisions. Each BLM State Office has designated a program lead to coordinate the Recreational Trails program with the State, FHWA, and other land management agencies.

Scenic Byways Program: The BLM has participated in various aspects of the Scenic Byway program particularly the Back Country Byways segment. BLM has a Back Country Byways segment in it's Recreation 2000 program which has resulted in the designation of 51 separate roads exceeding 2,600 miles, to date. Many additional roads are being considered in coordination with State and local governments and interest groups. To date communication has been initiated within all eleven Western States on Back Country Byways.

On a National level the Director of the BLM is an active member of the Scenic Byways Advisory Committee as provided for in ISTEA. After the criteria and guidelines are completed by the Advisory Committee and subsequently adopted by the FHWA, BLM will continue its activities in coordination with States to identify appropriate Byways for incorporation into the national Scenic Byways program.

Federal Lands Highway Program: BLM has aggressively pursued implementing this new era of transportation planning and management.

Extensive coordination with the FHWA has occurred. An Interagency Agreement has been entered in by BLM and FHWA for implementing ISTEA. This agreement establishes the procedures for funding appropriated administrative costs related to the FLHP and for coordinating activities of mutual interest. As a result of this agreement BLM developed a policy for implementing ISTEA and has furnished it to their field offices and State Office ISTEA coordinators.

A policy paper on establishing a Land Management Highway System (LMHS) has been completed. This paper has been reviewed by FHWA. The LMHS will consist of public roads which provide important access to and through BLM administered lands, and will parallel the Forest Highway system. BLM is working with the FHWA and the Department of Transportation in the development of an amendment to 23 U.S.C. which would establish a separate category of funding under the FLHP, exclusively for road projects on the LMHS.

BLM field offices are actively cooperating with State and local governments to support and implement ISTEA, including coordination of plans and development of mutually beneficial projects for funding under the "Enhancement" portion of the Surface Transportation Program (STP).

Additional policy on specific issues is being prepared. These issues include revision of BLM transportation planning procedures, to better integrate them with land use plans and State Department of Transportation (DOT) transportation plans. BLM is responsible for management of over 65,000 miles of roads and 165 major bridges on public domain land and over 15,000 miles of roads and 350 bridges on Oregon and California Grant Lands. These roads provide access to over 270 million acres of Public Land and equate to an investment that exceeds \$3.6 billion in replacement value.

BLM is participating with State DOTs in the preparation of transportation planning, functional reclassification, and project development for funding under various ISTEA provisions, including potential wetland banking projects.

In FY 1992, the first year of BLM participation, approximately \$2.5 million worth of BLM projects were funded through State DOTs. In FY 1993, approximately \$4 million in projects are funded; and about \$10 million in projects are planned for FY 1994. This includes projects associated with all three above mentioned programs, plus the enhancement portion of the surface Transportation Program.

These projects not only accomplish specific objectives set in BLM's land use plans, but they also provide increased or enhanced opportunities for the general public while improving travel and tourism economic benefits for the local area.

Future BLM Actions: BLM is committed to continued cooperative efforts with State and local officials to identify mutually beneficial projects for funding under the Surface Transportation

Program, Scenic Byways Program, Recreational Trails Program, and the Federal Lands Highway Program.

BLM is proceeding with the development of a Land Management Highway System in cooperation with State DOTs and the Federal Highway Administration.

BLM is examining, through DOT, a legislative amendment for the creation of a separate category of funding for LMHS surface transportation projects, under the FLHP, analogous to the category developed for the Forest Highways.

BLM also supports the revision of the ISTEA to exclude the allocation of FLHP projects from reductions of the hold harmless provision in section 1015. Currently, viable projects for FLHP funding are not being submitted by States because of the impact of the hold harmless provision.

BLM requests that the DOT review the need for allowing projects on Federal Lands to be exempted from the 80 percent cap on the Federal share of the project cost. Allowing up to 100 percent Federal funding would relieve the burden on small, less capable, economically depressed, rural counties from the overwhelming burden of providing the 20 percent funding for projects on Federal Lands.

BLM's efforts and recommendations support the President's *Natural Resource Protection and Environmental Infrastructure Investment* initiative by providing economic stimulus to rural counties in the Western States, promoting tourism and local economic growth, and protecting streams and rivers from degradation as a result of increased public use of inadequately constructed roads. In addition to decreasing the threat to public health and safety these recommendations will also help reduce the backlog of corrective maintenance needs on roads that would be part of the the LMHS.



STATEMENT OF
the
RAILS-TO-TRAILS CONSERVANCY

Presented by
HAL HIEMSTRA
Vice President for National Policy

Before the
House Committee on Public Works and Transportation
Surface Transportation Subcommittee

April 28, 1993

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to appear before you today to discuss the implementation of the Transportation Enhancements Program of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). I am Hal Hiemstra, vice president for National Policy at the Rails-to-Trails Conservancy. The Rails-to-Trails Conservancy (RTC) is a national non-profit conservation organization founded in 1985 for the purpose of identifying, preserving and converting abandoned rail-corridors into a nationwide network of public trails, non-motorized transportation corridors and other public uses. RTC is the nation's largest trails organization with a nationwide membership of 50,000 and staffed chapters in 6 states.

RTC's interest in ISTEA generally, and the Transportation Enhancements Program specifically, comes from our strong belief that the integration of trails into a community's transportation infrastructure provides critically needed and realistic non-motorized transportation alternatives for pedestrians and bicyclists. ISTEA recognizes the need for alternatives to the private automobile and requires that communities and states address the issue of intermodal and multi-modal transportation systems which include pedestrian and bicycle facilities. Rail-corridors -- which are being abandoned at a rate of approximately 3000 miles a year -- provide a unique base upon which to build this national network of non-motorized transportation facilities.

Our comments today on the implementation of the Transportation Enhancements Program are based largely on findings gathered in a nationwide survey mailed to each state department of transportation late last year. Survey responses were received from 44 states between late December, 1992 and March 1, 1993.

No Technical Corrections Bill

Before I speak to some of the detailed findings of our survey however, I want to address one issue already brought before the Committee over the last several days by a number of our fellow conservation organizations. RTC strongly recommends that the House Public Works Committee not move forward on substantive changes to ISTEA at this time. Such changes are premature when new regulations have not even been finalized. Furthermore, if the Committee proceeds with a technical corrections bill, we request that the public be given an opportunity to review specific legislative language that is being considered for technical corrections before the language is moved forward for mark-up.

Slow Program Development

Turning to the implementation of the Transportation Enhancements Program, our survey findings, along with daily discussions with citizens from across the country who are attempting to access this exciting new program, lead us to the

following observations and primary conclusions and recommendations.

First and foremost, while many enhancement project successes can be identified, the real potential of the Transportation Enhancements program has not yet been realized and most states have been slow to expend their enhancement funds. Though a number of states, including PA, CO, MD, MI, and WA have moved aggressively to initiate transportation enhancement programs, many states still lag behind in program development and movement in some states continues to be nearly nonexistent.

While slow movement among state DOT's has in some cases prevented ineligible or poor quality projects from being funded, generally it has frustrated an anxious public and detracted from the prominence given to the Enhancements program by Congress when it earmarked 10 percent of the STP funds for this program.

Fortunately, 15 months into this program, some 30 state DOT's are now overcoming the real or perceived learning curves associated with the enhancement program. These states have now adopted application and project selection procedures and have either recently completed their first funding cycle or plan on conducting their initial funding round within the next couple of months.

As I'm sure the Committee members can appreciate, the slowness states have shown towards funding enhancement projects has not been driven by a lack of eligible projects. In fact, every state that has announced a funding cycle has been inundated with project proposals. In fact, in Tennessee, the DOT has received over 40 proposals and a call for projects has not yet even gone out yet. Proposals typically come from within the state DOT's, from other state agencies, from county and local governments, and usually from private entities as well.

Expended Transportation Enhancement Funds

Of those states which have committed transportation enhancements funds to specific projects, our survey findings show that enhancements funds have been spent in each of the 10 possible transportation enhancement categories. The attached pie chart illustrates the percentage of federal funding each transportation enhancement activity has captured during the complete or partial funding rounds conducted during the first 14 months of the enhancement program. To date, historic transportation facilities, bicycle/pedestrian facilities, rail-trails, and landscaping projects are receiving the largest funding allocations in those states which have committed enhancement funds.

Though enhancement funds are beginning to be spent at an increasing pace, it is important to note that out of a possible \$771 million dollars available to the states for transportation enhancement activities in fiscal years 1992 and 1993, state

responses to our survey indicated that they had committed only \$166 million and the Federal Highway Administration reported on March 8 that only \$100 million had actually been fully obligated.

Citizen Participation

Another problem our survey findings reveal is that, with a few notable exceptions, efforts by state DOT's to facilitate strong citizen participation on statewide enhancement advisory committees have been weak and spotty. Only 17 states include any citizen representation on advisory committees yet 36 states have created some type of state level advisory committee. Of the 17 committees which include citizen representation, only 13 fully integrate citizens into advising on project selection. This finding is particularly troubling given the emphasis on citizen participation and openness incorporated into ISTEA.

FHWA Guidance

A contributing factor to the problems related to slow program development and low levels of public involvement is the general lack of program guidance developed for the Transportation Enhancements program by FHWA. While we strongly concur with the Transportation Enhancements Guidance issued by FHWA on April 21, 1992, a lack of on-going, encouraging, program development directives from FHWA has provided some states with an excuse to delay program development, and also resulted in the development of programs which vary widely in their quality and sophistication.

We urge the Committee to request FHWA to provide more on-going guidance to the states about model program elements like Pennsylvania's Citizens Advisory Committee, California's proposed project selection criteria, Maryland's creative inter-agency approach to project review, or Washington State's exemplary process for involving MPOs and Regional Planning Agencies in project selection. Though our research has not uncovered a Transportation Enhancements Program which we would characterize as a national model, many successful program elements and implementation strategies have been developed by various states. Without a more formalized approach to the sharing of these successful program elements -- and the implicit FHWA endorsement of these benchmark approaches -- the full potential of the TEP is unlikely to be reached.

Soft and Private Match

More FHWA guidance is also strongly encouraged on the unnecessary roadblocks created by the traditional FHWA restrictions on the use of soft or private matching funds. FHWA's November 17, 1992 memorandum prohibiting the use of soft and private funds to match federal dollars has caused considerable hardship among transportation enhancements project proponents. A few states,

Maryland for example, use state funds to match federal enhancement funds and thus are enabled to accept private, soft, and even in-kind contributions as the match to locally sponsored TEP projects. However, most states have become extremely cautious about the match issue and now simply prohibit enhancement proposals which are not sponsored -- and paid for in cash -- by local units of government. In these times of financially constrained government budgets, this exclusion of private funds eliminates the consideration of many worthy projects, is contributing to the slow spending of the enhancement funds, and eliminates a unique opportunity to stimulate new public/private transportation investments.

A related match issue involves bicycle and pedestrian enhancement projects in Western states. Because federal/state match ratios are greater than the traditional 80/20 ratio in some western states, all transportation enhancement activities -- except bicycle and pedestrian projects -- benefit from this increased federal share. This enhancement program inequity has been created by FHWA's interpretation that bicycle and pedestrian projects are not eligible for the increased federal share since ISTEA specifically shifted federal funding for bicycle and pedestrian projects from 100 percent funding to 80/20 funding. We do not agree with this FHWA interpretation and urge the Committee to request additional FHWA review of this issue.

10 Percent Set Aside

Another fundamental problem RTC has observed is the issue of whether the 10 percent set aside for the TEP applies to obligated levels of STP funding as well as to the authorized levels of STP funding. This has become a problem since ISTEA was not fully funded and some states have indicated that they do not have any enhancement funds to spend since their "enhancement dollars" are those dollars "above" the obligation ceiling. We strongly believe the Congress intended that 10 percent of any STP funds expended in a state be spent on transportation enhancement projects. I might add that this problem is now being faced within the safety community as well as within the transportation enhancements community.

FHWA Oversight

One of the factors contributing to continued confusion over many of the program implementation issues associated with the TEP results from the extremely general reporting requirements now required by FHWA. Though the April 21, 1992 FHWA Guidance indicated that subsequent guidance on reporting requirements would be forthcoming, none has been issued. While states were asked in the April 21 Guidance to keep track of enhancement spending by category, they were required only to report to FHWA the total number of funds expended on transportation enhancement projects during the past fiscal year.

This extremely general level of reporting does little to inform FHWA, Congress, or the America people about the way in which their taxpayer dollars are being spent, and certainly does not inform FHWA about innovative programs or projects being developed or funded by the states. Without this information, it will be impossible to determine whether the enhancements provisions of ISTEA are contributing to the goals set forth in the preamble to the bill.

Joint Training

We also urge the Committee to encourage FHWA to conduct joint training sessions among the FHWA Division staff, state DOT staff, and MPO staff administering this program. While our survey revealed that considerable interaction is taking place between their FHWA Division offices and state DOT's, we are not at all confident that issues are being resolved consistently among states. In addition, the MPO's have not been fully integrated into the transportation enhancement program. This observation is particularly troublesome given the fact that the metropolitan TIP's must include a transportation enhancement element even though the obligation of all transportation enhancement funding takes place at the state level. How can we expect MPO's to fully develop their transportation enhancement planning element when their views are not necessarily being integrated into the development of their state's transportation enhancement program and, they do not have the authority to obligate enhancement funding?

We believe this fundamental disconnect is a significant problem within the enhancement program and suggest that joint training sessions on program development hosted by FHWA may be the best way to bridge this gap at this time.

State Allocation Formulas and Gas Tax Restrictions

Finally, our research shows that some states are using existing allocation formulas, which pre-date ISTEA, as the reason they have not developed their enhancement programs. Frequently these formulas distribute funding to all parts of the state and don't match well with many of the new approaches ISTEA has taken -- such as the STP suballocation and enhancement programs. This spring, some state legislatures began addressing this issue and Virginia just passed new state legislation to better reflect the funding flexibility available in ISTEA.

Concerning the issue of restrictions on gas tax funding, 27 states responding to our survey reported state constitutional or legislative restrictions on using state generated gas tax revenue on non-highway projects. Fully a dozen of these states indicated that these restrictions may cause problems when providing state match funds for enhancement projects which are not on highway right-of-way.

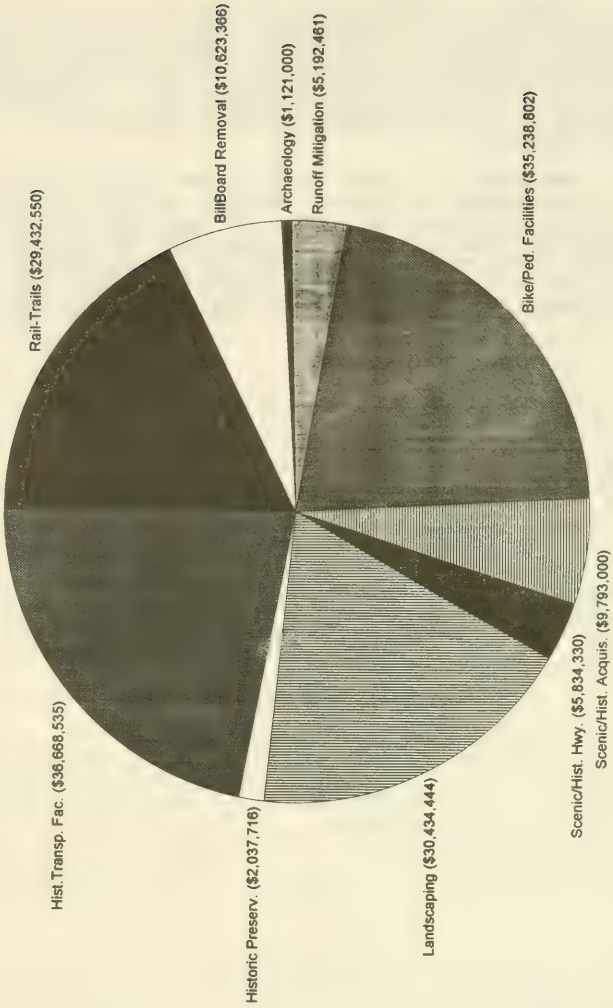
Mr. Chairman, these observations are just a few of the many details RTC learned in conducting our national Transportation Enhancements Survey. We will be happy to make available to Committee Members a complete copy of the 100+ page report which includes state-by-state program summaries. A number of program development and funding summary matrices are attached as appendices to this testimony.

In conclusion, I want to take the opportunity to echo my Surface Transportation Policy Project colleagues and urge the Committee to help break the pattern of "business-as-usual" and work vigorously to help implement the important new policy directions which make ISTEA the landmark piece of legislation it is. Thank you for the opportunity to come before you today and I would be happy to answer any questions the Committee members may have.

Commitments of Federal Funds--Nationwide (\$771,279,882 available in FY92 & FY93)

Transportation Enhancement Activities

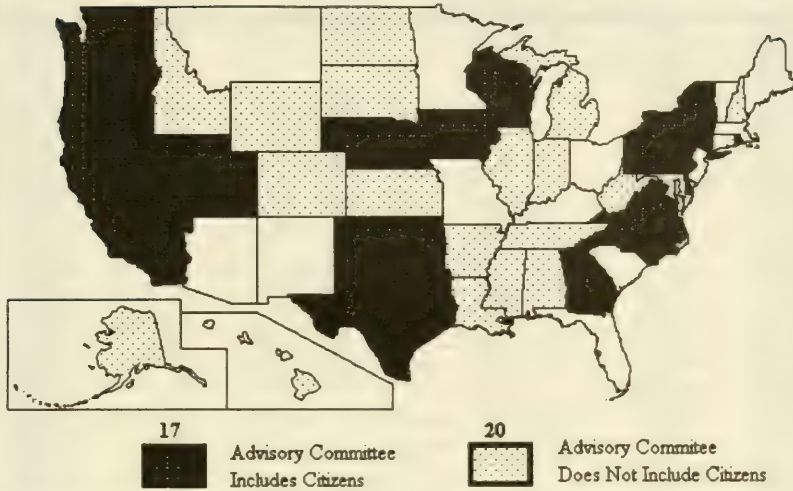
Federal Total--\$ 187,498,066*



* Includes \$26,013,832 in unspecified spending.

Rails-to-Trails Conservancy, April 26, 1993

State Level Advisory Committees & Citizen Participation



Source: Rails-to-Trails Conservancy, Enhancements Survey, April 1993

Progress Report on Program Development

State	Date Survey Returned	Application Procedures Established	Selection Process Established	Selection Criteria Developed	Funding Cycles Completed
AL	2/1/93	Yes	Yes	Yes	1
AK	12/1/92	No	No	No	1
AZ	NOT RETURNED	----	----	----	----
AR	12/3/92	Yes	Yes	Yes	0
CA	12/8/92	Yes	Draft	Draft	0
CO	12/15/92	Yes	Draft	Draft	2
CT	12/1/92	Yes	Yes	Yes	1
DE	12/28/92	Yes	Yes	Yes	0
DC	NOT RETURNED	----	----	----	----
FL	12/18/92	Draft	Draft	Draft	1
GA	12/31/92	Draft	Draft	Draft	1
HI	2/3/93	No	No	No	0
ID	12/1/92	Yes	Yes	Yes	0
IL	12/21/92	Yes	Yes	Yes	0
IN	1/26/93	Yes	Yes	Yes	0
IA	12/23/92	No	Draft	No	0
KS	12/4/92	Yes	Yes	Yes	0
KY	12/14/92	No	No	No	1
LA	12/16/92	Yes	Yes	Yes	0
ME	NOT RETURNED	----	----	----	----
MD	12/2/92	Yes	Yes	Yes	2
MA	12/22/92	No	No	No	1
MI	12/8/92	Yes	Yes	Yes	2
MN	NOT RETURNED	----	----	----	----
MS	1/7/93	Yes	Yes	Yes	1
MO	12/2/92	Yes	No	No	0
MT	11/25/92	Yes	Yes	Yes	0
NE	12/16/92	Yes	Yes	No	0
NV	12/7/92	Yes	Yes	Yes	0
NH	1/13/93	No	Yes	No	0
NJ	NOT RETURNED	----	----	----	----
NM	12/15/92	Yes	Yes	Yes	2
NY	12/4/92	Yes	Yes	Yes	1
NC	11/25/92	Yes	Yes	Yes	2
ND	1/11/93	Yes	Yes	No	1
OH	12/3/92	No	No	No	0
OK	2/9/93	Yes	Draft	Draft	0
OR	12/11/92	Yes	Yes	Yes	0
PA	12/7/92	Yes	Yes	Yes	2
PR	NOT RETURNED	----	----	----	----
RI	1/11/93	Yes	Yes	Yes	0
SC	NOT RETURNED	----	----	----	----
SD	12/7/92	Yes	Yes	Yes	1
TN	12/23/92	Draft	Draft	Draft	0
TX	12/15/92	Draft	Draft	Draft	0
UT	11/30/92	Yes	Draft	Draft	0
VT	NOT RETURNED	----	----	----	----
VA	2/1/93	Draft	Draft	Draft	0
WA	12/14/92	Yes	Yes	Yes	2
WV	12/10/92	Yes	Draft	Draft	0
WI	1/29/93	Yes	Yes	Yes	0
WY	11/30/92	Yes	Yes	Yes	0
TOTAL	44 RETURNED	32 YES	27 YES	24 YES	

RAILS - TO - TRAILS

Funding Structures & Policies

State	Enhancement Funds are Suballocated	Type of Matching Policy	Enhancement Funds Set-aside for DOT Sponsored Projects	Restrictions on use of State Gas-tax Revenue
AL	No	NA	Undetermined	Yes
AK	Yes	7% State	40%	No
AZ	-----	-----	-----	-----
AR	No	20% Min Local	70%	No
CA	No	12% State or Local Sponsor	~10%	Yes
CO	No	20% State or Local Sponsor	Undetermined	Yes
CT	No	20% Min Local	Undetermined	Yes
DE	No	20% State & Locals Flexible	33%	No
DC	-----	-----	-----	-----
FL	Yes	18% State, 41/9/50% Local	Yes, % Undetermined	No
GA	No	20% State or Local Sponsor	Undetermined	Yes
HI	No	NA	Undetermined	No
ID	No	20% State, 20% Min Local	Undetermined	Yes
IL	No	20% Min Local	Undetermined	No
IN	No	20% State or Local Sponsor	60%	Yes
IA	Yes	20% State, 20% Min Local	50%	Yes
KS	No	20% Min Local	Undetermined	Yes
KY	No	20% State or Local Sponsor	Undetermined	Yes
LA	No	20% State or Local Sponsor	Undetermined	Yes
ME	-----	-----	-----	-----
MD	No	20% State, 40/10/50% Local	Undetermined	No
MA	No	NA	Undetermined	No
MI	No	20% State, 20% Min Local	Undetermined	No
MN	-----	-----	-----	-----
MS	No	20% State or Local Sponsor	Undetermined	No
MO	No	20% Min Local	100% Landscaping	Yes
MT	Yes	13% State or Local Sponsor	15%	Yes
NE	No	20% State or Local Sponsor	33%	Yes
NV	No	5% State or Local Sponsor	Undetermined	Yes
NH	No	20% State or Local Sponsor	Undetermined	Yes
NJ	-----	-----	-----	-----
NM	No	25% State or Local Sponsor	Undetermined	No
NY	Yes	20% State or Local Sponsor	Undetermined	No
NC	No	NA	Undetermined	No
ND	No	20% State or Local Sponsor	Undetermined	Yes
OH	No	20% State or Local Sponsor	Undetermined	Yes
OK	No	20% State or Local Sponsor	Undetermined	No
OR	Yes	11% Local	Undetermined	Yes
PA	No	20% State, 20% Min Local	Undetermined	Yes
PR	-----	-----	-----	-----
RI	No	20% Min Local or State	Undetermined	No
SC	-----	-----	-----	-----
SD	Yes	20% State, 20% Min Local	Undetermined	Yes
TN	No	20% State or Local Sponsor	Undetermined	Yes
TX	No	20% State, 20% Min Local	10%	Yes
UT	No	20% State, 20% Min Local	Undetermined	Yes
VT	-----	-----	-----	-----
VA	No	20% State, 20% Min Local	Undetermined	Yes
WA	No	20% State or Local Sponsor	Undetermined	Yes
WV	No	20% State, 20% Min Local	Undetermined	Yes
WI	No	20% Min Local	Undetermined	No
WY	No	20% State or Local Sponsor	57%	NA
TOTAL	7 YES			27 YES

Project Commitment Summary - FY92 & FY93

State	Enhancements Authorization	Federal Share	State Match	Local Match	Total
AL	\$15,509,678	\$4,520,000	\$1,080,000	\$0	\$5,600,000
AK	22,721,870	786,487	78,070	0	864,557
AZ	12,244,294	0	0	0	0
AR	8,700,264	240,000	60,000	0	300,000
CA	64,343,824	0	0	0	0
CO	12,544,976	8,371,150	1,055,700	1,062,000	10,488,850
CT	12,326,608	4,523,889	779,600	351,372	5,654,861
DE	5,143,453	0	0	0	0
DC	3,749,531	0	0	0	0
FL	38,289,491	13,980,000	3,120,000	0	17,100,000
GA	23,731,723	12,088,729	2,801,981	220,202	15,110,912
HI	12,481,770	0	0	0	0
ID	8,823,297	0	0	0	0
IL	36,915,775	176,000	45,000	0	221,000
IN	19,945,370	150,000	0	38,000	188,000
IA	12,803,342	0	0	0	0
KS	10,935,591	0	0	0	0
KY	13,419,843	3,800,000	225,000	750,000	4,775,000
LA	11,684,099	1,400,000	0	280,000	1,680,000
ME	5,417,105	0	0	0	0
MD	11,105,362	10,365,600	2,091,400	0	12,457,000
MA	1,871,934	1,623,360	405,840	0	2,029,200
MI	17,634,605	17,830,180	2,374,695	5,020,000	25,224,875
MN	15,583,803	0	0	0	0
MS	9,128,045	13,690,237	0	8,015,026	21,705,263
MO	14,238,619	0	0	0	0
MT	11,036,853	16,000	0	2,480	18,480
NE	9,727,793	0	0	0	0
NV	7,324,747	1,455,000	26,116	0	1,481,116
NH	5,565,379	680,000	170,000	0	850,000
NJ	13,065,299	11,490,000	0	0	11,490,000
NM	12,980,313	6,890,521	1,223,033	860,000	8,973,554
NY	27,146,337	11,200,000	2,800,000	0	14,000,000
NC	23,784,304	21,560,000	4,765,000	625,000	26,950,000
ND	8,444,084	693,891	83,731	89,743	867,365
OH	22,928,074	1,768,000	252,000	0	2,020,000
OK	12,089,269	0	0	0	0
OR	9,388,049	1,076,341	15,597	259,049	1,350,987
PA	14,215,818	14,574,000	135,000	5,421,000	20,130,000
PR	4,909,653	0	0	0	0
RI	4,476,354	0	0	0	0
SC	11,693,357	0	0	0	0
SD	8,289,573	1,855,393	488,847	0	2,344,240
TN	14,967,313	489,000	122,000	0	611,000
TX	57,001,662	0	0	0	0
UT	7,105,678	0	0	0	0
VT	4,643,537	0	0	0	0
VA	13,735,849	0	0	0	0
WA	11,751,893	17,604,288	2,166,122	6,840,891	26,611,301
WV	6,072,310	1,100,000	200,000	50,000	1,350,000
WI	20,435,573	0	0	0	0
WY	7,206,539	1,500,000	0	375,000	1,875,000
TOTAL	\$771,279,882	\$187,498,066	\$26,564,732	\$30,259,763	\$244,322,561

RAILS - TO - TRAILS

Transportation Enhancement Activities

No. of Project Commitments—144 Total



Rails-to-Trails Conservancy, March 29, 1993

U. S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Oversight Hearings
on
Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)
including
The National Recreational Trails Fund Act

April 28, 1993

Testimony of Nell Jones
Director, Georgia Conservancy

Chairman Rahall, Members of the Surface Transportation Subcommittee, Ladies and Gentlemen, my name is Nell Jones and I am here to offer an environmental perspective regarding the National Recreational Trails Fund Act.

Thank you for the opportunity to express my support for the Trails Act and in particular for Project Opportunity -- a program I believe essential to the care of our recreational areas and our environment.

Personal Background

I would first like to offer some of my background and experience in dealing with environmental issues. I am an attorney, and I have devoted much of my life to dealing with environmental issues of crucial importance to the very area of our state where Project Opportunity will be working.

Over the years, I have volunteered thousands of hours to protect the precious natural environment of our North Georgia Mountains.

I have been a lobbyist for the National Wildlife Federation. I currently sit on the board of Trustees for the Georgia Wildlife Federation and the Georgia Conservancy, as well as being a Past President and a Vice President of Friends of the Mountain, an organization dedicated to protecting and preserving the environment of the southern Appalachian mountains.

During the recent Earth Summit in Rio de Janeiro, I actively participated in discussions regarding global re-forestation while attending as an observer for the Georgia Wildlife Federation.

As a child growing up in the flat sand hills region of eastern North Carolina, among the pine trees and gnats, I would keenly anticipate the summer vacations which would be spent with my grandparents in the cool North Georgia mountains. Each school year, I longed to hike the mountain trails and enjoy the wonderful outdoor recreation Georgia offers in the beautiful mountains of Rabun County.

These experiences have led me to my current status as an environmentalist and conservationist, whose interests have focused on issues affecting the North Georgia Mountains. The Georgia Conservancy's Guide to the North Georgia Mountains, which I edited, was a number one best seller last year. This manual is a complete user's guide to the many recreational opportunities available in the natural areas of the North Georgia Mountains. Most recently, I have represented the Lookout Mountain Parkway Association in developing the first comprehensive mapping of Lookout Mountain.

My professional career has been devoted to promoting awareness of recreational opportunities provided by our greatest resource -- the natural areas on our public lands in North Georgia.

The Trails Act

It is important that our national transportation policy reflect an increased sensitivity to environmental concerns. I believe Congress has taken a significant step in that direction in adopting The Intermodal Surface Transportation Efficiency Act, which contains the National Recreational Trails Fund Act.

The Trails Act is essential for the proper care and maintenance of the recreational trails enjoyed by so many of our citizens.

The care and maintenance of these trails is a constant and difficult battle.

We must be concerned not only with the effects of nature, but also with the negative impact of public use and abuse.

Our nation's existing trails are in dire need of renovation and maintenance. New trails are needed throughout the country, yet there has not been adequate funding to meet these needs.

Full funding of the National Recreational Trails Fund Act would provide the stimulus necessary to address these priorities.

Project Opportunity

Project Opportunity is an excellent vehicle for accomplishing trail maintenance while enlisting and inspiring our youth, instilling in them a sense of American pride, ecology,

accomplishment through job training, and national service.

As an environmentalist and frequent trail user, I am very interested in the activity of the National Recreational Trails Advisory Committee which represents a wide variety of diverse trail interests and was established under the National Recreational Trails Fund Act to advise the Secretary of Transportation with regard to the administration of this trails program. I would like to point out that at its most recent meeting, held in Austin, Texas, the committee passed a resolution strongly encouraging programs like the one we present to you today.

State of the Trails

There has never been a greater need for programs like Project Opportunity. The recent blizzard which swept through Georgia left a path of devastation, blasting North Georgia.

Each year, spring rains bring washouts, and the recent snowstorm exacerbated this process. There are many trees, boulders, and other obstructions which need to be cleared. In addition, trails must be reconstructed so that our citizens may enjoy the full benefits they offer.

Many of the nation's existing trails are suffering from lack of adequate maintenance, leading to erosion and degradation of water quality in adjacent streams. Proper maintenance and erosion control can often be accomplished with hand tools. Project Opportunity can make a big difference in diminishing trail erosion.

Proper trail construction and maintenance is essential to

diminishing adverse environmental impacts from outdoor recreation. Responsible recreational use of a well-constructed and maintained trail is not harmful to the environment.

Unfortunately, the effects of nature are not the only problems with which we must contend. Irresponsible use often results in the one of the most adverse environmental impacts of outdoor recreation -- pollution.

The North Georgia Mountains are littered with the remnants of public use. This is not limited only to bottles, cans, paper -- the things that most people consider when thinking of pollution, but includes major appliances, vehicles and machinery that have been abandoned.

Thousands of Georgia's citizens visit and enjoy these recreational trails each year. We must take immediate action to restore and maintain the health of this natural resource. Project Opportunity will deal with these environmental problems, while at the same time providing our young people with meaningful employment and a chance to make a difference.

Benefits

Project Opportunity's environmental enhancement program will enlist the service of our young people to repair and maintain the infrastructure of our trails in North Georgia. The benefits will be immediate and widespread.

While learning valuable life skills, these dedicated young people will gain meaningful employment in the best classroom possible -- the great outdoors.

These youth will have the opportunity first hand to experience the wonder and beauty nature has to offer. They will develop and understand the benefits of clean air, clean water and unpolluted soil, and how to properly care for and protect our environment. They will learn respect for the interdependent life forms which require these elements and appreciate how these fundamentals are the building blocks for life itself.

Project Opportunity will awaken sensibilities and help these young people develop an awareness of quality of life. So too, they will learn how to make a difference in stopping the decline of our natural preserves. In addition, they will enjoy the sense of accomplishment implicit in being a part this joint effort.

Project Opportunity will give these young people the chance to know the wonder I have experienced as a child and will instill in them an appreciation for the environment and the need to protect our vital natural resources.

I believe this program is an investment in our youth, our environment and our infrastructure and will pay incredible dividends in the futures of these young people, the state, and our nation.

A Cooperative Effort

Project Opportunity has a broad base of support in the community as evidenced by the various organizations that have come together to help make the program a reality.

Participants from the environmental community in Georgia supporting Project Opportunity include:

- o The Georgia Conservancy
- o The Georgia Wildlife Federation
- o The Sautee-Nacoochee Community Association
- o Georgia Environmental Organization
- o Georgia Forestry Association -- Project Learning
- o The Trust for Public Land
- o Interfaith Council For the Protection of Nature
- o Outdoor Activity Trail Center of the Atlanta Department of Parks and Recreation

As a result of funding provided by the National Recreational Trails Act and Project Opportunity, the Georgia Wildlife Federation, the Sautee-Nacoochee Community Association and the Outdoor Activity Center have committed to trail construction on their properties.

With the cooperation and participation of these many partners in the environmental community, the support of your subcommittee, and many others, Project Opportunity is assured of being a stunning success.

Ms. Nell Jones
23302 Plantation Drive
Atlanta, Georgia 30324
(404)233-4343

**STATEMENT OF ANTHONY R. KANE
ASSOCIATE ADMINISTRATOR FOR PROGRAM DEVELOPMENT
FEDERAL HIGHWAY ADMINISTRATION
U.S DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
APRIL 28, 1993
TRANSPORTATION ENHANCEMENTS, SCENIC BYWAYS, RECREATIONAL
TRAILS, AND BICYCLE/PEDESTRIAN PROGRAMS UNDER THE ISTEA**

Mr. Chairman, Members of the Committee, thank you for giving me the opportunity to speak with you about the Federal Highway Administration's (FHWA) efforts to implement several important provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); specifically, those concerning transportation enhancements, scenic byways, recreational trails, and bicycle and pedestrian programs. The ISTEA has been characterized as landmark legislation in part because of the innovative programs I wish to discuss with you today. Putting these new approaches into action required the FHWA to expand its efforts into new areas. We have worked diligently with our partners to implement these new programs as we work towards our major goal: to ensure that these ISTEA provisions translate into new and broader opportunities to improve our Nation's surface transportation system.

Our commitment to making these new programs successful coincides with the Administration's strong support for the environment and the Nation's infrastructure. The new Administration supports the ISTEA's forward-thinking environmental provisions; the Administration's and FY 94 budget proposals will further enhance these ISTEA goals.

Transportation Enhancements

Section 1007 of the ISTEA allows States to spend Federal-aid highway funds on transportation enhancement activities that go beyond the scope of traditional highway construction projects. This new program provides that 10 percent of all Surface Transportation Program (STP) funds apportioned to a State be made available *only* for transportation enhancement activities. This allows States to undertake certain enumerated types of environmental or historic preservation projects, either as part of larger transportation projects or as separate, stand-alone projects. Activities eligible to be accounted for as transportation enhancement activities include pedestrian and bicycle facilities, historic preservation, beautification, landscaping and mitigation of water pollution due to highway runoff. We issued interim guidance on this new program on April 24, 1992.

The Congress included the transportation enhancements mandate as a means to stimulate additional efforts in these types of activities. Measures that go beyond what is customarily provided as environmental mitigation can be considered as transportation enhancements. States may not use transportation enhancement funds to finance normal environmental mitigation work. We realize that the process of determining which activities will be considered as normal mitigation and which will be accounted for as transportation enhancement activities may be difficult. Initially, it has required close coordination between the State Departments of Transportation (State DOTs) and their FHWA Division Offices on a case-by-case basis.

The transportation enhancement provisions of the ISTEA have taken most State DOTs into new territory, in which they are dealing more closely with other State agencies traditionally responsible for recreation, historic preservation, and tourism. These activities have also brought States in closer contact with private, "grass-roots" organizations

endeavoring to implement improvements that might be financed with transportation enhancement funds.

Unfortunately, many States have had difficulties implementing this new program. To date, only 14.6 percent of the \$771,000,000 made available during FY 92 and FY 93 was obligated for enhancement projects. We believe there are several reasons for this slow rate of obligation. First, and fundamentally, many States have not yet (or only recently) decided upon a process for making needed funding decisions. Some of this delay may be attributed to high levels of interest in the program among many different organizations both within and without State government. As a result, some States are only slowly and cautiously developing their processes. Another probable reason for the slow rate of obligation is that in many cases States did not have transportation enhancement projects "on the shelf," while more traditional highway projects had been in development for many years. A lack of available matching funds is another potential problem; some States have restrictions on their ability to use State transportation funds for enhancement activities and are therefore having to rely on matching funds from other sources. Also, some States are placing relatively lower priority on transportation enhancements until they get obligational authority more in line with apportioned amounts of funds.

Of those funds that have been obligated for transportation enhancements, the largest share appears to have been dedicated to bicycle and pedestrian facilities, including rails-to-trails projects. The State of Colorado, to cite just one example, has used enhancement funds for bicycle paths, and has also programmed \$500,000 of enhancement funds for the removal of signs along scenic byways.

Other categories receiving major shares of the funding include landscaping and historic transportation facilities. Many States have begun highway landscaping projects that

they had not been able to fund in the past. In some cases the landscaping projects are initiated at the community level, often by groups such as garden clubs. As for historic transportation facilities, railroad stations and depots have received the most attention. Enhancements to these facilities have included renovations for use as intermodal transportation centers, museums and other uses. For example, Wyoming has thus far expended most of their enhancement funds on the preservation of a railroad depot in Cheyenne. The Wyoming Department of Transportation, in cooperation with a number of local entities, is modernizing the depot into a transportation museum and tourist information center.

Some State DOTs, as well as many local project sponsors, have complained that applying the full complement of Federal requirements applicable to multi-million dollar highway projects to modestly-funded transportation enhancements is burdensome and onerous. We are working on identifying the exact nature of the burden and on determining what streamlining approaches will make sense.

Implementation of this new program has admittedly gotten off to a slow start. Nevertheless, we view the open process being used by most States to develop procedures as a healthy approach that will lead to a robust and widely supported program. In cooperation with the State DOTs and a variety of other partners, we are identifying and addressing critical implementation difficulties. For example, we have cosponsored a series of regional conferences on transportation planning for liveable communities and have participated in the U. S. Department of Agriculture's conferences on how the ISTEA can benefit rural America, both of which emphasized the ISTEA's transportation enhancement provisions. We believe a significant increase in the rate of obligations will occur over the next few months as many States bring their new processes into play.

Scenic Byways

Another innovative provision of the ISTEA is the Scenic Byways program. The ISTEA calls on the FHWA to establish this program, with the assistance of a 17-member Scenic Byways Advisory Committee. The Advisory Committee is to develop recommendations on minimum criteria and standards for use by State and Federal agencies in designating highways as Scenic Byways and All-American roads. The Committee has held three meetings and will soon hold its fourth. This latter meeting will be held June 1-2, 1993, and will be the Committee's last. We anticipate that the Committee will submit a report summarizing its recommendations to the Secretary and Congress by October 1, 1993.

In accordance with the ISTEA, we have initiated an Interim Scenic Byways Program while the national program is being developed. Under this program, grants are provided to assist States with existing scenic byways programs to undertake eligible project activities along designated scenic byways. Grants totaling \$10,000,000 were awarded to 21 States in FY 92. Highway and associated facility modifications, as well as tourism-related activities, were funded with 80 percent Federal dollars. Grant applications amounting to \$31,400,000 have been received from 27 States and Puerto Rico for FY 93. However, only \$10,000,000 are available for grants. Strict adherence will be given to the ISTEA approval priorities as grant requests are reviewed. We expect to make the approval decisions and notify the applicants by the end of May.

In implementing it the interim program, we have been coordinating with various private organizations to establish public/private sector partnerships to undertake scenic byways technical assistance activities. Talks are underway concerning partnership arrangements for the establishment of a National Scenic Byways Clearinghouse operation, the development of technical assistance manuals, and the sponsorship of a national scenic byways

conference. We are currently considering initiating partnership agreements with the American Automobile Association, the American Recreation Coalition, the National Trust for Historic Preservation, and Scenic America. We have also been working diligently with our State partners, both on this program and their own "Back Roads" and Forest Scenic Highways programs.

The ISTEA prohibits the erection of new billboards not in compliance with 23 U.S.C. §131(c) along highways on the Federal-aid primary and Interstate systems which on, before, or after December 18, 1991, are designated as a scenic byway under a State's scenic byways program. The provision has the effect of prohibiting new billboards in zoned and unzoned commercial and industrial areas along scenic byways on the Federal-aid primary and Interstate System. In this regard, we have determined that a State is considered to have a scenic byways program when it has officially recognized a highway for its scenic, historic, natural, recreational, cultural, or archeological qualities. The determination concerning designated scenic byways is left up to the State based on its designated criteria.

Recreational Trails

The Symms National Recreational Trails Act of 1991 (SNRTA) was enacted as part of ISTEA. The FHWA administers this program in consultation with the Department of the Interior. This program opened a new working relationship between the Departments of Transportation, Interior, and Agriculture, State resource and park agencies, and grass-roots trails advocates. The FHWA is working with the National Park Service, the Bureau of Land Management, and the U.S. Forest Service to develop this program. We issued guidance on implementing the program to our regional and division offices on April 2, 1993.

Funds from the Trails Program can benefit all trail users. Funds can be used to construct and maintain recreational trails on public and private land for both motorized and

non-motorized recreational trail use. The program encourages innovative multi-use trail corridor sharing.

Funding for the Trails Program is to be obtained from revenue received by the Federal Highway Trust Fund from the Federal excise tax on fuel used off-road by recreational vehicles such as snowmobiles, off-road motorcycles, all-terrain vehicles (ATVs), and four wheel drive vehicles. This money is to be allocated according to the formula set forth in the SNRTA, with 50 percent divided equally among the States, and the remaining 50 percent divided according to each State's share of off-road recreational fuel use. We have a contract with the Oak Ridge National Laboratories to provide models for estimating off-road recreational fuel use for each State. This contract is scheduled for completion by October 1993.

The SNRTA intended these funds to be transferred from the Highway Trust Fund to the National Recreational Trails Trust Fund. The Trails Program, however, currently receives obligational authority from the Federal-aid Highways account through drawdowns under section 104 of Title 23, United States Code. No funds were appropriated in FY 92, while \$7,500,000 were set aside from Federal-aid Highways in FY 93. The President's proposed budget for FY 94 included \$15,000,000 for the Trails Program.

The SNRTA also established the National Recreational Trails Advisory Committee. The Committee has representatives from various trail user groups: hiking, cross-country skiing, off-road motorcycling, snowmobiling, horseback riding, ATV riding, bicycling, four-wheel driving, recreational boating, and hunting and fishing. The role of this Committee is to review how States use funds from this program, establish criteria for trail-side and trail-head facilities that can be funded under this program, and make recommendations to the Secretary of Transportation to advance the purposes of the SNRTA. The Committee met in

Washington, DC, in December 1992 and in Austin, Texas, in April 1993. The Committee approved a list of trail-side and trail-head facilities, and recommended topics for evaluating trail projects. The Committee has made several recommendations to the FHWA to advance the purposes of the SNRTA, including recommendations concerning State Recreational Trail Advisory Boards, State tax provisions for off-road fuel use, and multi-use trail issues.

The first projects to carry out the purposes of the SNRTA will be underway by this summer. The Congress stipulated that SNRTA funds are to be made available for projects which have been planned and developed under the otherwise existing laws, policies, and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan (SCORP) required by the Land and Water Conservation Fund Act. All States have SCORPs.

Pennsylvania provides a good example of how the program is working. Pennsylvania has a statewide trails plan which identifies 15 different objectives that can be met with the expenditure of SNRTA funds. Pennsylvania committed early on in the program to plan and implement the SNRTA. The FHWA Division office in Harrisburg provided guidance and oversight during a carefully designed public participation process that resulted in the State announcing a SNRTA project funding cycle between November 1, 1992, and January 15, 1993. Pennsylvania created PARTAB, the Pennsylvania Recreational Trails Advisory Board, on October 29, 1992, to assist the State in carrying out the provisions of the SNRTA.

As a result of these coordinated efforts by Pennsylvania, the State received 87 SNRTA applications for projects totalling \$3,565,000. The 87 applications were reviewed, rated, and ranked by the PARTAB. Due partially to the limited Federal funds available, the

PARTAB was only able to recommend 17 projects for funding totalling \$231,837 in SNRTA assistance.

FHWA Bicycle and Pedestrian Program

Finally, I would like to tell you about the progress we have made in implementing those provisions of the ISTEA concerning bicycle and pedestrian programs. To date, 49 of 50 States have named bicycle/pedestrian coordinators, as required by the ISTEA. Hawaii, the only remaining State, will soon introduce legislation to permit the creation of such a position. The FHWA sponsored a conference of the State coordinators on March 25, and 26. Forty-six State coordinators attended, along with 45 other representatives of Federal agencies and national bicycling and walking organizations.

Federal-aid funding for bicycle and pedestrian programs and projects has increased significantly since the passage of the ISTEA. Many bicycle and pedestrian projects have been funded under the Transportation Enhancements Program, as well as the Congestion Mitigation and Air Quality Program (CMAQ).

In the 16 years of Federal-aid funding prior to FY 91, \$31,500,000 was spent for independent bicycle and pedestrian facilities. Incidental projects were not able to be separately tabulated. In FY 91, \$9,131,000 was spent for independent bicycle and pedestrian projects, and \$40,000,000 has been spent to date. In the one-and-one-half years since the enactment of the ISTEA, according to figures provided by the Rails to Trails Conservancy, \$48,000,000 in enhancements money was spent for bicycle and pedestrian facilities, and \$39,000,000 was spent for rail-to-trail conversions to bicycle/pedestrian trails. We estimate that \$6,958,024 has been spent for independent bicycle/pedestrian facilities, and \$2,214,753 has been spent for incidental projects.

Information on funding programs for bicyclists and pedestrians under the ISTEA has been distributed to FHWA field offices, to numerous conference attendees, and to local public interest groups. This information has been very well received.

We are completing work on the National Bicycling and Walking Study required by the 1991 Department of Transportation Appropriations Act. Public input was received through the establishment of a public docket, a national meeting on the Study, and workshops at national conferences. The draft of the final study report is under review and should be issued this summer. The study report delineates an action plan for Federal activities to promote increased use and safety of bicycling and walking. The report also puts forth recommended activities for State and local governments.

We issued guidance to the States through our region and division offices on January 28, 1992, in an effort to aid them in filling the bicycle/pedestrian coordinator positions. We are now working with the assistance of several State coordinators to prepare guidance on the bicycle and pedestrian planning requirements in the ISTEA. The FHWA's notices of proposed rulemaking on statewide transportation planning and metropolitan planning, published on March 2, 1993, include language on incorporating bicycle and pedestrian plans into State and metropolitan transportation plans.

Conclusion

These four programs, on Transportation Enhancements, Scenic Byways, Recreational Trails, and Bicycles and Pedestrians, represent some of the new challenges presented to the FHWA in the ISTEA. These programs are still in the early stages of development, but we are confident that with the help of our partners they will prove over time to be of great benefit to our Nation's surface transportation system. We are working with the States and other interested parties to implement these provisions in a proactive way, such as: holding

meetings throughout the country; issuing guidance; and incorporating these new programs into our training courses for Federal and State employees. Full funding for the ISTEAs, as was provided for in the President's Economic Stimulus package, would amplify the effects of these programs and aid in our implementation efforts. We look forward to working with the Committee to make these new approaches as successful as possible.



SCENIC AMERICA
10th Year

Statement of

SCENIC AMERICA

Presented by

MARY ANN LASCH
Director of Programs

on

**Implementation of the Intermodal
Surface Transportation Efficiency Act**

before the

**SUBCOMMITTEE ON SURFACE TRANSPORTATION
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES**

April 28, 1993



Good afternoon. My name is Mary Ann Lasch, and I am a landscape architect and the Director of Programs for Scenic America, a national nonprofit organization dedicated to the conservation and enhancement of the scenic character and visual quality of America's communities and countryside.

Scenic America is a Steering Committee member of the Surface Transportation Policy Project (STPP), a coalition instrumental in obtaining many of the reforms in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), including creation of the enhancement category and the National Scenic Byways Program.

Sally Oldham, Scenic America's President, is a member of the National Scenic Byways Advisory Committee that was created by ISTEA. Each member was selected by the Secretary of Transportation to represent a particular interest. Scenic America was selected to represent scenic preservation interests. In addition, Scenic America's President is Chair of the STPP Enhancements Working Group.

Scenic America is one of the seven co-sponsors of the eleven regional conferences on "Transportation Planning for Livable Communities" that will conclude next weekend in Florida. The co-sponsors are: the Bicycle Federation of America; the Federal Highway Administration; the National Trust for Historic Preservation; the Rivers, Trails and Conservation Programs of the National Park Service; Scenic America; the Surface Transportation Policy Project; and the U.S. Environmental Protection Agency. The conference program includes presentations by Scenic America on scenic byways, billboard control and design standards. As participants in the conferences we have had the opportunity to meet with thousands of people from state DOTs, Metropolitan Planning Organizations (MPOs), and a wide variety of public interest groups. We have also talked to lots of individuals who are just interested in their community's transportation system.

Scenic America believes that increased mobility and economic development do not have to destroy the unique character of America's roadways and the communities located along them. America still has places of scenic beauty: scenic drives, historic towns, and unspoiled countryside. But these places are disappearing faster than we realize. Our distinctive environmental and cultural heritage is being homogenized by commercial landscapes. Nationally franchised roadside businesses such as gas stations, restaurants and motels, and the proliferation of billboards, convert distinctive and unique places into look-alike strip development.

The designation and protection of scenic byways is a way to preserve America's beauty and cultural heritage for us and future

generations to enjoy.

SCENIC BYWAYS PROGRAMS

Seldom are conservation and economic development so potentially compatible as in the area of scenic byways. It is widely recognized that the scenic byways program is one of the new programs in ISTEA that has tremendous potential for creating jobs and stimulating economic development, especially in rural areas. But the key element to sustainable long term economic benefits of a scenic byways program is the retention and enhancement of the routes' visual quality and the other intrinsic resources for which it is designated.

The ISTEA provided for the creation of a National Scenic Byways Program and the designation of All-American Roads that could be marketed internationally with confidence that these routes were genuinely some of the most beautiful and interesting in the world. ISTEA also recognized the need to preserve the qualities for which roads were designated. It expressly required that projects funded with Interim Grants not diminish the integrity of the scenic, historic, archeological, cultural, or recreational value of the designated road.

We have observed tremendous interest from both the public and the state Departments of Transportation (DOTs) for developing existing and new scenic byways programs in response to ISTEA. Of the 21 states and territories represented by members of this Subcommittee, 19 have scenic byways.

In 1992, Scenic America surveyed the state DOTs in order to learn more about their scenic byway programs. A summary of the results of our scenic byway questionnaire is Attachment 1 to this testimony.

Since conducting that survey, staff members of Scenic America have met with or talked to almost all of the state scenic byway coordinators during the regional Transportation Planning for Livable Communities conferences. In addition, Scenic America has continued its research in identification, assessment, management, and protection of scenic resources and other elements of scenic byways, and has monitored the types of projects funded with interim grant funds.

Based on our survey, research, discussions, and studies, Scenic America recommends the following three key elements for all scenic byways programs:

1. Value-based assessment process for designation

Each scenic byway program should establish definitive and specific designation criteria, as well as a process to select

high quality scenic byways. The process should identify the intrinsic resources of the byway corridor, considering scenic, historic, cultural, recreational, natural and archeological features. Unless one or more of these resources is represented in the corridor, the road should not be designated.

Many, but not all, states have taken this approach in the selection of scenic byways. Fifteen of the 34 states participating in our survey evaluate eligibility for designation based on scenic, historic, cultural, recreational, natural and archeological values. Good models for designation processes with clear criteria exist in New York, Arizona, Vermont, Washington, North Carolina, Connecticut, and California.

Disappointingly, some states have designated scenic byways purely to stimulate tourist travel with little attention to whether the route is truly scenic, cultural, or historic. Worse yet, states have not provided for the long term conservation of the qualities for which the route was designated.

2. Conservation of Scenic Byway elements

Identifying the intrinsic resources of scenic byways during the designation process is not enough to ensure that these resources will be protected. The landscape and roadway that form scenic byway corridors will experience change due to tourism, growth and development, natural processes, etc. A corridor management plan should be developed to manage the opportunities and challenges to protect the character of any scenic byway.

ISTEA expressly identified corridor management planning as a priority item for interim grant fund eligibility under the National Scenic Byways Program. Six of the 21 states that received interim grant funds for FY'92 specifically requested funds for one or more corridor management plan development programs (CA, KS, LA, MA, NY, and WA). In addition, most of the other projects for which interim grant funds were requested were ones that would be identified and implemented through a corridor management planning process. Such projects included: interpretative signs, maps and brochures, and improvements to scenic byways and their facilities, including rest areas, parking, visitor centers, picnic areas, overlooks, etc.

We are heartened that the National Scenic Byways Advisory Committee plans to recommend that corridor management plans be developed as a part of the required documentation for every National Scenic Byway designation. This recommendation would give the effort to develop corridor management planning processes and model plans much greater emphasis.

Currently, very few states have comprehensive corridor management plans in place. California requires corridor

management plans based on local zoning regulations and has had good success where the plans have been consistently enforced. New York, Oregon and Arizona have corridor management plans for some scenic byways. In our survey, state DOTs' first choice for further information was for details on the preparation of corridor management plans and methods for the protection of scenic resources.

We have observed that many states have significant grassroots support for scenic byway designation and management. Iowa, Colorado, and Washington are examples of states that have strong grassroots organizations that are trying to develop corridor management plans to promote and protect scenic byways.

The fact that FHWA received over \$34M in requests for the \$10M in Interim Scenic Byways grants available in FY 1992 indicates that the interest in and needs of the program significantly exceed available funding. This interest is especially clear when you consider that 17 of the 20 minimum allocation states ultimately did not request any funds because of the disincentive in the formula.

As part of the environmental community, Scenic America is very concerned that ISTEA not be opened to amendment until there has been sufficient time for the many changes it required to be implemented and carefully evaluated. We would strongly oppose a technical corrections bill that included any substantive changes. However, if there were a true technical corrections bill, we would like to take this opportunity to ask that it include deletion of scenic byways grant funds from the minimum allocation calculation in order to give all states an equal incentive to apply for these competitively awarded funds. The technical correction needed is explained more fully in Attachment 2 of this testimony.

The National Scenic Byways Advisory Committee will report to Congress at the end of 1993 on how the National Scenic Byways Program should be administered and will recommend the minimum criteria for designation as a National Scenic Byway and an All-American Road. FHWA should use those recommendations as the basis to issue regulations setting minimum criteria for designation and standards for corridor management of these roads.

3. Billboards on Scenic Byways

Scenic America believes that billboards are not appropriate along a scenic byway corridor. Almost nothing will destroy the distinctive character of a community or landscape faster than billboards. Congress recognized that billboards were not appropriate anywhere along scenic byway corridors, even in commercial areas, when it included the ban on new billboards on

scenic byways in ISTEA. The ban applies to new off-premise billboards on state-designated scenic byways that are on the Interstate and Federal-aid primary highway systems. In addition, a maximum of 10 percent of the scenic byways grant funds can be used to remove nonconforming billboards from scenic byways.

While FHWA advised the states of the ban in February, 1992, the agency only recently followed up with a request to its field offices to survey the states by April 30, 1993 to determine the extent to which each state had the ability to and was enforcing the ban. In our experience, implementation of the ban is very uneven among the states. While many states are actively enforcing the ban or moving to amend state legislation to comply with the ISTEA mandate, others are reluctant to designate new scenic byways or even to admit that they already have scenic byways because they anticipate difficulty enforcing the billboard ban.

Both the States and FHWA field offices are confused about the specific roads to which the ban applies. Some states assume that the ban will apply only after a state system that complies with the new National Scenic Byways Program has been adopted. Therefore, these states have made no effort at compliance. Until FHWA publishes the rules for the new national scenic byways system, some states will not designate any scenic byways or attempt to enforce the ban on any currently state-designated scenic roads, routes, parkways, highways or byways. Worse yet, even though the ban applied to scenic byways that were designated at the time ISTEA took effect, many states have no readily accessible list or map of the state's scenic byways. Interested citizens cannot determine the roads to which the billboard ban applies and monitor compliance. This is an area in which additional FHWA guidance is sorely overdue.

In addition, the billboard industry is beginning to apply increased pressure at the state and Federal level to undermine the billboard ban in several ways. In some states, like Colorado, which has had a strong scenic byways program, legislation has been introduced that would exempt developed or commercial areas in a scenic corridor from designation as part of the scenic byway in a direct effort to exclude commercial areas from ISTEA's scenic byway billboard ban.

Commercial areas are an integral part of scenic byways corridors. Often a scenic byway's historic or cultural features are based on earlier commercial activities and districts along the road and are an important part of the scenic byway's character and resources. Scenic byways are continuous corridors, a driving experience, not a series of isolated scenic overlooks. The segmentation of the corridor will diminish the visual integrity of the traveler's experience.

Businesses that serve travelers and local needs should be addressed in the corridor management plans within the complete context of all enhancement, protection and promotion strategies for the scenic byway. In communities where strong on-premise sign controls are in place, even the national franchises are very cooperative in adapting their signs and the architecture of their buildings to fit the character of the landscape or community. The billboard industry should not be allowed to segment scenic byway corridors into a series of scenic overlooks in the name of "legitimate business."

Even the Outdoor Advertising Association of America had for years cited scenic byways an area where billboards were not appropriate. Now they are lobbying to repeal the ban under the guise of a technical correction to ISTEA. One need not wonder too long at the billboard industry's sudden interest in scenic byways. They understand that scenic byways across the nation are poised on the brink of a significant increase in traffic and business.

We want to caution the subcommittee that allowing billboards in commercial areas of scenic byway corridors would not be a technical correction; it would be a complete repeal of 131(s) because billboard controls on scenic byways would be no different than controls on all the other portions of the Interstate and Federal-aid primary system to which the Highway Beautification Act applies. Again, we urge you not to open ISTEA, but if you must, do not make substantive changes. Limit changes to true technical corrections. Attachment 3 provides further details.

Scenic America recommends that the states place a billboard ban on all roads designated as National Scenic Byways, including state and local roads that are not protected by ISTEA from further billboard erection. This added protection is necessary because scenic byways are often smaller, less traveled state and local roads than those byways on the Interstate and primary systems which ISTEA protects. FHWA's 1990 National Scenic Byways Study indicated that 51% of scenic byways mileage was interstate and primary class; 49% were secondary, urban or off-system mileage.

We are extremely concerned that billboards only be removed where new ones cannot be built, i.e., along scenic roads where the ISTEA ban applies or in jurisdictions like Denver or Houston, which have banned the building of new billboards. The worst use of public funds would be the case which Florida is planning. Billboard companies have been asked to identify which non-conforming signs they would voluntarily sell to the state. Past use of this practice by the states is one of the reasons that the public saw so little improvement in their visual environment for the \$170 million spent by the states between 1965 and 1991 to buy nonconforming billboards. Not surprisingly, billboard companies

offered their least productive boards in locations where another board still would be visible in the same viewshed.

Now that highway trust funds are available to the states for the purchase of nonconforming billboards, we hope FHWA will revise its regulations to ensure that scarce transportation dollars don't become a subsidy to the billboard industry.

TRANSPORTATION ENHANCEMENTS

Scenic America is especially interested in the way enhancement funds are used. Nearly half of the ten enhancements categories directly address scenic resource protection: scenic and historic highways, acquisition of scenic easements and sites, landscaping and scenic beautification, and billboard control and removal. The remaining categories may also include scenic resources in their implementation.

As a member of the Pennsylvania Department of Transportation's (DOT's) Transportation Enhancements Advisory Committee, I have had the opportunity to participate in what I believe is a very good state program. PennDot's enthusiasm and support for creation of a program that will serve the public has many strong features. The broad composition of the Committee is very effective because it represents federal, state and regional agencies and a wide variety of interested organizations. The enhancement application process was open to the public in addition to governmental organizations. A conscious effort was made to select and fund model projects from each of the enhancements categories and to work quickly to implement the program. The state is committed to spending a significant percentage of the enhancement funds available.

PennDOT's enhancement program contrasts sharply with our observation that many states have been very slow to obligate enhancement funds. We realize it is a new program, and we would not want the states to waste money just to show it had been obligated. If the time is used, as in California's case, to design a good process, fine. But many states have yet to obligate a single enhancement dollar. Also, there are other states like Missouri that are waiting to see if the ISTEA will be fully funded over its lifetime, and that intend to let any shortfall in obligation authority be absorbed by the enhancement category. We believe it is important that FHWA encourage the states to obligate enhancement funds.

By definition, enhancement projects should exceed the minimum legal requirement or even a given state's standard treatment of an area or resource. It is our experience that enhancement projects respond to legitimate community needs that should have been a part of standard infrastructure investment for years, but which generally were not being considered by state

DOTs. Scenic America hopes that the increased use of enhancements, combined with increased public participation, will raise the quality level of transportation projects. To this end, FHWA should take a more active role to identify the best practices of each state and share that information with a broad range of parties interested in transportation.

Because Enhancements is a new program and has generated so much public interest, we have been puzzled by FHWA's scarce data collection efforts. To our knowledge, the only data FHWA collected from the states is the amount of funds obligated in the fiscal reporting system called category 33B. The stewardship function with which FHWA is charged requires that it be able to report to Congress on the way these funds are being used to ensure that the funds are spent on appropriate projects.

While we recognize both the restrictions of the Bush administration's regulatory moratorium and FHWA's reluctance to issue rules at the beginning of a new program, the time has come for FHWA to issue enough guidance to its field offices to improve the consistency, with which similar enhancements projects are treated among the states especially with respect to the source of matching funds and full funding of all ten categories.

Public Participation

Public participation is an area in which ISTEA intended to fundamentally change the way in which DOTs do business by getting the public involved at both the state and regional level. But many states waited to implement new public participation requirements until FHWA issued regulations. To date, FHWA has issued only proposed regulations, and they do no more than require that the state have a process. Scenic America's constituents are anxious to participate. We believe FHWA has an opportunity - no, a duty - to be a catalyst for change by setting minimum requirements and offering both creative thinking and examples of the best practices already being used in the states.

In addition, FHWA should be encouraged to reach out beyond its traditional relationship with the state DOTs. We have observed that ISTEA gave the MPOs a role for which many are ill-equipped. At the same time, it is apparent that the state DOTs have a vested interest in seeing the MPOs and the public participation process fail in the hope that control over the transportation program will be returned to them. FHWA should offer training and provide guidance to ensure that MPOs are capable of assuming the responsibilities assigned them by ISTEA. FHWA is also in the best position and should take the lead to encourage the states to work cooperatively with their new partners.

We have also noted that both states and MPOs need additional

guidance and training on appropriate environmental processing for enhancement projects. We are not suggesting that an environmental impact statement is needed for every enhancement project. On the contrary, we would expect that most enhancement projects could be handled much more simply. We would like to see FHWA explore streamlining environmental processing for enhancement projects which are much smaller in scope and budget than most transportation projects.

Design standards

ISTEA amends Title 23 of the U.S. Code, Highways, to recognize scenic and historic values and provide greater ability to protect historic and scenic resources.

"Section 109(q) HISTORIC AND SCENIC VALUES.--If a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) of this section and section 133(c) if such project is designed to standards that allow for the preservation of such historic or scenic value and such project is designed with mitigation measures to allow preservation of such value and ensure safe use of the facility."

This provision has been welcomed by many of your constituents who look forward to the protection it offers to their community's scenic and historic character.

More specifically, in communities across the nation, insensitive and inappropriate application of standardized design and engineering requirements have resulted in projects that destroy the historic fabric of communities, remove trees and landscapes unnecessarily or are simply over-engineered and ugly. There is great optimism that this language will bring back common sense to create transportation facilities that fit into the community and function efficiently.

We understand that FHWA is interested in studying this issue and plans to develop research and case studies to address the impact of design standards. We encourage further research and guidance to encourage more sensitive and flexible application of design standards to meet community need and expectation.

In conclusion, I would like to thank you for the opportunity to offer our observations and recommendations to the Subcommittee. We look forward to working with Congress and the USDOT to achieve ISTEA's potential for improving transportation in America.

Scenic America's Survey of State Scenic Byway Programs

Of the 50 states surveyed for this questionnaire, 34 responded. The following is a summary of these responses

3. As of Dec. 18, 1991, did your state recognize any scenic roads or byways? yes 23 no 11

Yes: AK, AZ, AR, CA, CO, CT, GA, ID, KS, KY, MS, NV, NY, NC, OK, OR, RI, SC
SD, TX, VT, UT, WA

No : AL, DE, HI, IL, IA, MI, MT, NE, NJ, ND, WI

- **** If no, please skip down to question 29. *****
If yes, please answer the following questions:

**** Questionnaire Begins With 23 States Responding To The ***
Following Questions

4. Does your state have an overall program that creates state-wide scenic byways based on overall scenic byway criteria? yes 12 no 11 Or does your state create scenic byways based on individual recognition? yes 9 no 2

Overall Program

Yes: AZ, AR, CO, ID, NY, NC, OR, RI, TX, VT, UT, WA

No : AK, CA, CT, GA, KS, KY, MS, NV, OK, SC, SD,

Individual Recognition

Yes: AK, CA, CT, GA, KY, MS, NV, SC, SD,

No : KS, OK

Both Overall/Individual

NY, OR

5. How are individual scenic byways or an overall scenic byways program established?

Legislature 5

State Agency 9

Executive Order 1

Comb. of Leg/State 6

No Response 2

CA, CT, RI, SC, WA

AK, GA, ID, MS, NV, NC, SD, TX, VT

CO

AZ, AR, KY, NY, OR

KS, OK

6. When was the scenic byways program established?

AK - TBD	AZ - 1982	AR - 1992
CA - 1963	CO - 1989	CT - 1989
GA - TBD	ID - 1974	KS - N/A
KY - N/A	MS - N/A	NV - 1983
NY - 1985	NC - 1990	OK - N/A
OR - 1993	RI - 1985	SC - N/A
SD - 1990	TX - 1968	VT - 1977
UT - 1989	WA - 1967	

- * TBD - State still has yet to decide
- * N/A - State did not respond

7. Is there a specific commission, committee, or advisory group for scenic byways? yes 14 no 11

Yes: AK, AR, AZ, CO, CT, ID, NY, OR, RI, SD, TX, VT, UT, WA,

Of these 14 states, 10 answered the next question. The following are the number of members in each committee:

AK - 25	AZ - 11	AR - 9
CO - 15	CT - 5	OR - 8
RI - 11	SD - 7	UT - 10
VT - 10		

Of the 14 states responding yes, the following are the responsibilities of the byways groups:

<u>Review Applications</u>	<u>10</u>	AR, AZ, CO, CT, OR, RI, SD, VT, WA, UT
<u>Recommend Approval</u>	<u>8</u>	AR, AZ, CO, CT, OR, SD, VT, WA
<u>Approve Scenic Byways</u>	<u>4</u>	AZ, CO, RI, UT
<u>De-designate</u>	<u>3</u>	AZ, CO, RI
<u>Other</u>	<u>6</u>	AK, CO, OR, RI, VT, WA

The following are examples of these "other" responsibilities: Washington has a "secondary team" which makes qualitative assessment of scenic recreation and cultural merit; Rhode Island has established regulations for maintenance, identification, construction and preservation of scenic highways.

8. What is the composition of this committee?

<u>State agencies represented</u>	<u>12</u>	AK, AZ, AR, CT, ID, OR, RI, SD TX, VT, UT, WA
<u>Federal agencies represented</u> (Includes BLM, USFS, NPS)	<u>6</u>	AK, AR, RI, OR, UT, WA
<u>Legislative representatives</u>	<u>2</u>	RI, WA

<u>Individual appointees</u>	<u>5</u>	AZ, AR, CA, RI, WA
<u>Other public interest groups representative</u>	<u>5</u>	AK, AR, OR, RI, WA

Numbers of each?

<u>State agencies represented</u>	<u>3</u>	OR, RI, VT
	<u>5</u>	AZ
	<u>6</u>	UT
	<u>7</u>	SD
	<u>N/A</u>	AK, AR, CT, TX, WA, ID

<u>Federal Agencies</u>	<u>2</u>	OR
	<u>4</u>	UT
	<u>N/A</u>	ID, WA, AR, AK

<u>Legal representatives</u>	<u>2</u>	RI
	<u>N/A</u>	WA

<u>Individual appointees</u>	<u>2</u>	RI
	<u>4</u>	AR
	<u>6</u>	AZ
	<u>N/A</u>	CA, WA

<u>Other interest groups</u>	<u>2</u>	RI
	<u>3</u>	OR
	<u>N/A</u>	AK, AR, WA

9. How are the members selected/appointed?

Appointed by Governor, State Senate, Scenic Highways staff and other state agencies.

10. Which agencies administer the scenic byways program?

<u>Transportation</u>	<u>18</u>	AK, AZ, AR, CA, CO, CT, GA, ID, MS, NV, NY, NC, OR, SC, SD, TX, VT, WA
<u>Tourism</u>	<u>1</u>	UT
<u>Scenic byways board or commission</u>	<u>4</u>	CO, NY, RI, UT
<u>Planning</u>	<u>3</u>	CA, GA, ID

**11. How many scenic byways have been designated?
How many miles of scenic byways are designated?**

	<u>Roads</u>	<u>Miles</u>		<u>Road</u>	<u>Miles</u>
AK	N/A	N/A	AZ	16	650
AR	N/A	N/A	CA	56	1094
CO	17	1676	CT	13	64
GA	2	85	ID	13	114

KS	N/A	N/A	KY	2	---
MS	1	371	NV	1	120
NY	---	+3000	NC	31	---
OK	5	256	OR	1	350
RI	3	10	SC	18	332
SD	2	95	TX	10	6962
VT	25	43	UT	27	1260
WA	TBD	TBD			

12. Which road classifications are eligible for designation?

<u>Interstates</u>	<u>14</u>	AR, AZ, CA, GA, ID, MS, NV, OR, RI, SC SD, TX, VT, WA
<u>Primary</u>	<u>17</u>	AZ, AR, CA, CO, GA, ID, MS, NV, NC, OR, RI, SC, SD, TX, VT, UT, WA
<u>Secondary</u>	<u>16</u>	AZ, CA, CO, GA, ID, MS, NV, NC, OR, RI, SC, SD, TX, VT, UT, WA
<u>Local roads</u>	<u>12</u>	AZ, CA, CO, GA, MS, NC, OR, RI, SC, SD, VT, UT
<u>Unpaved or rustic roads or backways</u>	<u>8</u>	AZ, CO, GA, MS, OR, RI, SD, VT
<u>Roads on federal lands</u>	<u>7</u>	AZ, CO, GA, ID, OR, SD, UT
Please list federal agencies		<u>USFS, BLM, NPS</u>

13. Are scenic byways required to meet AASHTO standards?

<u>Yes</u>	<u>7</u>	NV, NC, OK, RI, TX, VT, UT,
<u>No</u>	<u>12</u>	AZ, AR, CA, CO, CT, ID, MS, NY, OR, SC, SD, WA
<u>N/A</u>	<u>3</u>	GA, KS, KY
<u>To Be Decided</u>	<u>1</u>	AK

14. Do any of your scenic byways limit access of certain vehicle types? (For example, must all roads be passable for RV's, passenger cars, and 4WD?)

<u>Yes</u>	<u>4</u>	AZ, CO, NC, OR
<u>No</u>	<u>15</u>	AR, CA, CT, GA, ID, MS, NV, NY, RI, SC, SD, TX UT, VT, WA
<u>N/A</u>	<u>3</u>	KS, KY, OK
<u>TBD</u>	<u>1</u>	AK

If you discourage or restrict access by certain vehicle types, please describe.

- * Colorado and Oregon have some road areas restricted to 4 wheel drive only
- * North Carolina and Arizona have bridge weight and car height restrictions.

15. Are your state scenic byways selected based on nominations or applications that evaluate eligibility for designation?

<u>Yes</u>	<u>15</u>	AZ, AR, CA, CO, CT, GA, ID, NV, NC, OR, RI, SD VT, UT, WA
<u>No</u>	<u>2</u>	MS, SC
<u>N/A</u>	<u>4</u>	KS, KY, NY, OK
<u>TBD</u>	<u>2</u>	AK, TX

16. Who can nominate or apply for scenic road designation?

<u>State agency</u>	<u>7</u>	AZ, ID, NV, OR, RI, VT, WA
<u>Local government or municipality</u>	<u>9</u>	AZ, CA, CO, ID, OR, RI, SD, VT, WA
<u>Township</u>	<u>5</u>	AZ, CO, GA, NV, RI,
<u>Other</u>	<u>6</u>	AR, GA, NV, OR, SD, VT
<u>Adjacent property owners</u>	<u>5</u>	AZ, CO, GA, NV, VT
<u>Any individual</u>	<u>7</u>	AZ, CO, GA, NV, SC, VT, UT

17. Once a road is designated, what are the features or benefits of scenic byways in your state?

<u>Special route signage</u>	<u>14</u>	AZ, AR, CA, CO, CT GA, ID, NV, OR, RI SC, SD, TX, WA
<u>Interpretative signs</u>	<u>8</u>	AZ, AR, CO, GA, ID, OR, UT, WA
<u>Higher level of roadway & roadside maintenance</u>	<u>4</u>	AZ, OR, UT, WA
<u>Public hearings to review any alterations of byway</u>	<u>1</u>	AR, RI, VT, WA
<u>Environmental review of impacts to scenic byways required for proposed state and local projects</u>	<u>5</u>	AZ, CA, ID, OR RI
<u>Special promotion on state maps</u>	<u>12</u>	AZ, AR, CO, GA, ID NV, OR, RI, SC, SD, TX, UT
<u>Special promotion on state brochures</u>	<u>9</u>	AR, CO, GA, ID, OR, RI, SD, TX, UT
<u>Billboard ban on scenic byway</u>	<u>5</u>	AR, CA, GA, OR, WA
<u>Other</u>	<u>7</u>	AR, CO, CT, NY, NC, OR, WA

18. Is local government approval of the designation required?
 Yes 6 No 13 To Be decided 1 No Answer 3

YES: CA,NY,OR,SD,UT,WA

NO: AZ,AR,CO,CT,ID,MS,NV,NC,OK,RI,SC,TX,VT

TBD: AK

N/A: GA,KS,KY

Is the local government approval of the designation recommended?

Yes 8 No 3 To be decided 1 No answer 11

Yes: AZ,AR,CO,ID,RI,SC,TX,UT

No: CT,MS,VT

TBD: AK

N/A: CA,GA,KS,KY,NC,NV,NY,OK,OR,SD,WA

19. Do local governments provide scenic byway corridor management plans or other methods to protect resources of the scenic highway? yes 6 no 12 To be decided 1 No answer 4

YES: AZ,CA,NC,NY,OR,WA

NO: AR,CO,CT,ID,MS,NV,RI,SC,SD,TX,VT,UT

TBD: AZ

N/A: GA,KS,KY,OK

Are these plans required? Yes 3 CA,CT,OR

Are these plans recommended? Yes 5 AZ,CO,ID,NY,RI

20. What types and techniques of scenic protection are typically used?

<u>Zoning overlay</u>	<u>3</u>	AZ,CA,WA
<u>Land use restriction</u>	<u>3</u>	CA,GA,WA
<u>Scenic easement</u>	<u>3</u>	AZ,GA,WA
<u>Development setbacks</u>	<u>3</u>	CA,GA,WA
<u>Restrictions of adjacent zoning and dev.type</u>	<u>3</u>	CA,GA,WA
<u>Ban of billboards along scenic highways</u>	<u>8</u>	AR,CA,CT,GA,OR,SC,UT,WA
<u>Landscape protection</u>	<u>3</u>	AZ,CA,GA
<u>Other</u>	<u>9</u>	AR,CA,CT,GA,OR,RI,SC VT,WA

* Examples of other techniques include:

- Arizona uses peer pressure through scenic byway organizations
- Washington works through the "bottom", where it can try local least impact control.
- Vermont regulates that administrators use "Vermont

Backroad" as guide for maintenance and reconstruction activity.

- South Carolina imposes restrictions on existing billboards
- Rhode Island requires approval from Scenic Highway Board before Scenic Highway Alteration allowed

21. Is the approval of adjacent property owners required for designation of a scenic byway? yes 1 no 15 N/A 6

Yes: CT

No: AZ, AR, CO, ID, MS, NV, NC, OR, RI, SC, SD, TX, UT, VT, WA

N/A: CA, GA, KS, KY, NY, OK

22. What criteria is used to review applications for scenic byways?

<u>Scenic/visual</u>	<u>18</u>	AZ, AR, CA, CO, CT, ID, MS, NV, NC, NY, OR, RI, SC, SD, TX, UT, VT, WA
<u>Historic</u>	<u>15</u>	AZ, AR, CA, CO, CT, ID, MS, NV, NC, NY, OR, RI, SD, TX, UT
<u>Cultural</u>	<u>15</u>	AZ, AR, CA, CO, CT, MS, NV, NY, NC, OR, RI, SD, TX, VT, WA
<u>Road classification</u>	<u>5</u>	AR, CT, NV, OR, RI
<u>Safety</u>	<u>4</u>	AR, CO, NV, OR
<u>Recreational</u>	<u>9</u>	AZ, AR, CA, CO, NV, OR, RI, TX, WA

23. Who prepares the application for designation?
volunteers 9 staff 11 consultants 5

Volunteers: AR, CA, CO, CT, ID, OR, RI, SD, UT

Staff: AZ, AR, CA, CT, ID, MS, NV, NC, OR, UT, WA

Consultants: AZ, AR, CA, NY, OR

24. Has a specific process been set up for evaluation of applications? yes 13 no 4

Yes: AZ, AR, CA, CO, CT, ID, NY, NC, OR, RI, SD, UT, VT

No: MS, NV, SC, TX,

N/A: GA, KS, KY, OK, WA

If no, does the review committee develop their own evaluation criteria? yes 0 no 1 No Answer 3

25. What are the typical elements of an application?

<u>Description</u>	<u>12</u>	AZ, AR, CA, CO, CT, ID, NV, NY, NC, OR SD, UT
<u>Photos/Slides</u>	<u>8</u>	AZ, CO, ID, NV, NC, OR, SD, UT
<u>Road Classification</u>	<u>8</u>	AZ, AR, CO, ID, NV, OR, SD, UT
<u>Zoning</u>	<u>3</u>	AZ, NC, OR
<u>Natural Features</u>	<u>11</u>	AZ, AR, CA, CO, CT, ID, NV, NY, NC, OR, SD
<u>Geological Features</u>	<u>10</u>	AZ, AR, CA, CO, CT, ID, NV, NY, OR, SD
<u>Recreational Features</u>	<u>7</u>	AZ, AR, CO, ID, NV, OR, SD,
<u>Plans/Map</u>	<u>11</u>	AZ, AR, CA, CT, ID, NV, NY, NC, OR, SD, UT
<u>Video of Road</u>	<u>2</u>	CA, OR
<u>Land Use</u>	<u>6</u>	AZ, CA, CT, ID, NY, OR
<u>Economic Devel.</u>	<u>2</u>	AZ, OR
<u>Cultural features</u>	<u>10</u>	AZ, AR, CA, CO, CT, ID, NV, NY, NC, OR
<u>Scenic Qualities</u>	<u>10</u>	AZ, AR, CA, CO, CT, ID, NV, NY, OR, SD
<u>Safety on route</u>	<u>4</u>	CO, NV, OR, SD
<u>Other</u>	<u>2</u>	NC, UT

26. How long does it take to review a typical application?
How large is the typical application?

<u>0-1 Month:</u>	<u>3</u>	<u>0-5 Pages:</u>	<u>2</u>
<u>2-6 Months:</u>	<u>4</u>	<u>11-20 Pages:</u>	<u>1</u>
<u>7-10 Months:</u>	<u>1</u>	<u>21-30 Pages:</u>	<u>1</u>
		<u>30+ Pages:</u>	<u>3</u>

27. How will your program change in response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)?

- *Oregon, Colorado, Arizona responded that this would have little or no effect.
- *Kansas and South Carolina believe that this opens the way for new programs.
- *Nevada and Georgia responded that programs may become more formal and structured.
- *Washington replied that this will create a new dual system with new criteria to be established.

28. Did you apply for the National Scenic Byway interim funding for 1992? yes 15 no 5 N/A 3

YES: AZ, CA, CO, CT, ID, KS, NV, NY, OR, RI, SC, SD, UT, VT, WA
NO: AK, AR, MS, NC, TX

If yes, what type of project did you submit?

Projects Applied For:

- * Tri-State Pacific Coast Scenic byway (US-101) Corridor: Oregon, Washington.
- * Projects of developing, designing and planning new state scenic byway programs: Kansas, Nevada
- * Creating information/interpretive facilities: South Carolina, South Dakota, Arizona, Colorado
- * Projects in obtaining consultant to choose roads which qualify for scenic byways and develop road design standards: Rhode Island
- * Various and individual projects: New York, Georgia, California

**** Questionnaire Resumes With 34 States Responding ****

29. If you don't have a program now, will your state initiate a scenic byways program? yes 14 no 1 N/A 19

YES: AK, KS, KY, OR, SC, VT, NJ, MT, MS, ND, IA, MI, NE, WI

NO: AL

N/A: AZ, IL, AR, CA, CO, CT, GA, ID, MS, NV, NY, NC, RI, SD, TX, UT, WA, HI, DE

30. Do you plan to use your state's transportation enhancements funds for the scenic byways projects? yes 21 no 3 N/A 10

YES: AL, AZ, AK, CO, ID, IL, IA, KY, MI, MS, MT, NE, NJ, NY, NC, OR, WA, HI, UT, WA, WI

NO: KS, NV, RI

N/A: AR, CA, CT, DE, GA, HI, ND, OK, TX, VT

31. What is your state doing now to enforce the ban on new billboard construction along federal-aid portions of state designated scenic byways?

- * States that claim nothing is being done: Nevada, Kansas
- * States which ensure federal regulations are being met: Rhode Island, Arizona
- * States on which no billboards are allowed: Hawaii
- * States which allow no new billboards: Oregon
- * (note: OR has a problem to cure where they allow billboards to be moved on a scenic byway)
- * States which allow no new billboards in designated areas (scenic byways): Colorado, Michigan
- * States where inspections are made every three months to remove billboards: South Carolina
- * States in which billboards are controlled through inventory and restriction standards: South Dakota
- * States in process of amending State Outdoor Advertising Act: California

32. Do you think ISTEA's new emphasis on scenic byways, eg. consideration of scenic beauty and historic significance and the creation of operation and management, sign and highway safety standards will change your state's interest and treatment of scenic byways? yes 19 no 11 N/A 4

YES: AZ, AK, ID, IA, KS, KY, MI, MT, NE, NV, NJ, NY, ND, OR, SC, TX, VT
WA, WI
NO: AL, AR, CA, CO, CT, IL, MS, NC, RI, SD, UT
N/A: DE, GA, HI, OK,

If yes, please describe

- * Incentive to start a new program: Kentucky, Michigan, South Carolina, Kansas, Oregon and New Jersey
- * Increased interests in program, causing more development or attention: Arizona, Georgia, North Dakota
- * Increased options for funding: New York, Washington and Michigan

33. What type of information would you be interested in having about scenic byways?

Assistance in developing

Corridor management plans
or other techniques to
protect scenic byways

18

AZ, AK, CO, ID, IL,
KS, KY, MI, NE, NV,
NJ, NY, ND, OR, RI,
WA, WI

General technical assistance

13

AK, CT, ID, IL, IA,
KS, NE, NV, NJ, ND,
RI, WA, WI

Scenic route signage

14

AR, AK, IL, IA, KS
NE, NV, NJ, NY, ND,
RI, SD, TX, WI

Interpretative signage

15

AZ, AK, IL, IA, KS,
NE, NV, NJ, NY, ND,
RI, SD, TX, UT, WI

Landscaping with native plants

9

AZ, IA, KS, NE, NJ
NV, ND, RI, WI

Billboard control

9

AZ, IA, NE, NV, NY,
ND, RI, WI, KS

Visual analysis

12

CA, CT, IL, IA, KS,
NE, NV, NJ, ND, OR,
RI, WI

Other

4

NV, OR, RI, VT

Scenic America recommends that

Any ISTEA technical corrections legislation should delete "scenic byways" funds in Section 1013 of ISTEA, the minimum allocation calculation, in order to provide an equal incentive to all states to seek Scenic Byways Grants.

Discussion:

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) created a new National Scenic Byways Program that balances economic development with scenic resource protection. ISTEA provided \$30 million for grants to states to improve their existing programs. The funds are to be awarded at the rate of \$10 million each year for FY'92, FY'93, and FY'94. Through a quirk in ISTEA's complex funding formulas, twenty states have no incentive to apply for these funds.*

The 20 states affected are listed below:

Alabama	Kentucky	Ohio
Arizona	Louisiana	Oklahoma
Arkansas	Maine	Oregon
California	Michigan	Tennessee
Florida	Mississippi	Texas
Georgia	Missouri	Wisconsin
Indiana	North Carolina	

In FY'92, at least two states, Indiana and Texas, refused to apply for grant funds, and two states, Arizona and North Carolina, withdrew their applications for Scenic Byways grants after realizing that they would not be increasing their overall share of federal funds. Only three states in the affected group applied for any of the \$10M in FY'92 grant funds: California, Florida, and Louisiana.

The legislative cure is to delete the words "scenic byways" from 1013(a)(3) of ISTEA. This change would take scenic byways grants out of the minimum allocation calculation.

*This result occurs because any amount that a state is awarded in Scenic Byways grant funds figures into the calculation of that state's minimum allocation (MA) amount for the following year.

Scenic America urges Congress not to repeal the ISTEA ban on new billboards on scenic byways.

Allowing billboards to be erected in commercial and industrial areas along scenic byways would be a complete repeal of new 23 U.S.C 131(s) which was added by section 1046 of ISTEA. That would not be a "technical correction."

23 U.S.C. 131(s) reads as follows:

(s) SCENIC BYWAY PROHIBITION. -- If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under the program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section.

The billboard industry, represented by the Outdoor Advertising Association of America, is lobbying for repeal of 23 U.S.C. 131(s) under the guise of a technical correction to ISTEA. The billboard industry argues that the last sentence in subsection 131(s) means that the commercial and industrial exemption in subsection 131(d) applies to scenic byways.

That interpretation cannot be correct because it would mean that the billboard controls on scenic byways are no different than the controls on all the other portions of the Interstate and Federal-aid primary system to which section 131 applies.

The principles of statutory construction require that the specific ban on billboards on scenic byways in the first part of subsection 131(s) be given meaning if at all possible. Because to read the last sentence of subsection 131(s) as allowing the signs in 131(d) would make the rest of 131(s) meaningless, that interpretation cannot be correct.

Another principle of statutory construction requires that specific provisions be given precedence over more general ones. Applying that rule to subsection 131(s), the ban on scenic byways is absolute except for the signs in subsection 131(c) which subsection 131(s) expressly allows.

While the language is sufficiently clear that there is no need to consult the legislative history, the Conference Report on ISTEA (Rpt. 102-404), makes it crystal clear that Congress knew it was enacting a complete ban and intended just that:

The Conferees intend that under the Conference agreement no new billboards shall be enacted [sic] on scenic byways on the Interstate or Primary Systems as those systems are in effect on the date of enactment of the Intermodal Transportation Efficiency Act of 1991.

ISTEA offers a wonderful opportunity to strengthen environmental protection while stimulating the economy. Seldom are conservation and economic development so compatible as in the area of scenic byways. But a key element to sustaining the long term economic benefits of a scenic byways program is retention and enhancement of the corridor's visual quality in addition to preservation of the intrinsic values for which the corridor is designated. **Commercial and industrial areas are an integral part of scenic byway corridors.** Congress should retain the billboard ban on scenic byways that is in ISTEA.



National Trust for Historic Preservation

Testimony of

Elizabeth S. Merritt
Associate General Counsel

before the
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
United States House of Representatives

April 28, 1993

Introduction

Thank you for the opportunity to present the views of the National Trust for Historic Preservation concerning the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, ISTEA. The National Trust strongly supported the passage of this legislation and since its enactment a year and a half ago, we have been working with states and communities across the country to put the new law to work.

The National Trust was chartered by Congress in 1949 and represents nearly a quarter of a million members across the country. We serve those members, and the public at large, through our 7 field offices and our headquarters staff in Washington, and through our 18 historic house museums nationwide. Our mission is to foster an appreciation of the diverse character and meaning of our American cultural heritage and to preserve and revitalize the livability of our communities by leading the nation in saving America's historic environments. With the strong support of our members, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

The National Trust has also taken a long-standing interest in the nation's transportation policy. The federal historic preservation program has been closely intertwined with our transportation program, ever since President Lyndon Johnson signed into law the Department of Transportation Act and the National Historic Preservation Act on the same day, October 15, 1966. For more than a decade, the National Trust has been one of the strongest advocates involved in enforcing Section 4(f) of the Department of Transportation Act, the Department's strict historic preservation mandate, which prohibits federal transportation projects from harming historic places or parks unless there is no "feasible and prudent alternative" to doing so and unless the project includes "all possible planning" to minimize harm to those sites.

1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 673-4000 / FAX (202) 673-4038

We would like to thank the Federal Highway Administration (FHWA) for its support and partnership in serving as a co-sponsor for a series of eleven conferences on "Transportation Planning for Livable Communities," now being completed nationwide. In addition to the National Trust and FHWA, these two-day conferences were also co-sponsored by the Surface Transportation Policy Project, Scenic America, the Bicycle Federation of America, the Environmental Protection Agency and the National Park Service. Since December 1992, these workshops have trained more than 3,000 people in understanding the ISTEA planning process and the enhancement program, and how the public can become more involved in supporting transportation improvements as a vital component of livable communities. These conferences have also served the important function of bringing together federal and state transportation officials, local planners, preservation and environmental advocates, and concerned citizens, in order to enhance the level of communication among these groups. Many of the recommendations we offer below are based on what we have learned from listening to the participants in these conferences from around the country.

The National Trust also commends the FHWA for its support and encouragement of the Scenic Byways Advisory Committee as it seeks to develop guidelines for a national scenic byways program.

Recommendations for Improving the Transportation Enhancement Program

The Congressional creation of the transportation enhancement program under ISTEA has been one of the most important and innovative developments in transportation policy since Congress created the Department of Transportation in 1966. In fact, the enhancement program represents a continuation of Congress's original 1966 mandate to the Department:

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation land, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed.

Notwithstanding the roots of the enhancement mandate in the Department's statutory charter, the transportation enhancement program under ISTEA represents a fairly radical new way of doing business for most states. As a result, initial implementation of the program has been inconsistent, and in our view it has not yet lived up to its promise.

Based on our experiences working with states and local communities around the country, we have several recommendations for improving implementation of the

enhancement program, which are described in more detail below. We believe these suggestions would help to ensure more effective compliance with the enhancement provisions of ISTEA. None of these recommendations requires any statutory revision.

In addition, we endorse the April 20 memorandum sent to the Subcommittee from the Surface Transportation Policy Project (STPP), of which the National Trust is a member. We agree that statutory changes in the law are premature, but we also support the modifications that STPP has recommended in the event the law is amended.

1. Need for More Guidance to the States.

The most essential problem to be addressed by the Department of Transportation is that the states urgently need additional guidance from federal officials on how to develop and implement the enhancement program. While we understand that federal DOT policy calls for a "hands off" approach, to allow the states flexibility, we are concerned that the Department has taken this policy too far, especially during these crucial first years of the new program, when the states are anxiously seeking additional information.

The Federal Highway Administration has issued a five-page guidance memorandum on Transportation Enhancement Activities, dated April 24, 1993. Although we agree with most of the policies in this memorandum, more detailed guidance is needed. A number of issues are not addressed in the memorandum, and others need a more thorough discussion. In addition, unforeseen issues have arisen as the program has taken shape, creating additional confusion. FHWA headquarters needs to do a better job of ensuring that all of its regional and division administrators have the same understanding of the new law. Some regions, for example, are rejecting projects as ineligible, while those same projects are being approved in other regions.

- Mandatory Ten Percent Funding for Enhancements. Although Section 1007 of ISTEA requires that ten percent of the STP funds "apportioned" to each state be reserved exclusively for enhancements, most states are not actually spending their ten percent. Many states are assuming that the ten percent requirement applies only if ISTEA is fully funded, so that the ten percent would end up being absorbed by the shortfall between the authorization ceiling and the obligation ceiling. Since ISTEA has not been fully funded, the ten percent requirement is essentially treated as optional by many states under this interpretation. In our view, this practice is inconsistent with the intent of Congress in establishing the ten percent set-aside. Accordingly, guidance is needed from DOT instructing the states to allocate for enhancements ten percent of the funding received each year, regardless of obligation ceilings.
- Public Participation. Another area that needs improvement in the implementation of ISTEA is public participation. Despite the emphasis in ISTEA

on public involvement in planning and project selection, the states have been very inconsistent -- and mostly ineffective -- in attempting to carry out this requirement. We believe that a useful step toward more successful compliance would be an FHWA report on the best procedures for public participation that have been developed by the various states. For example, in our view, Pennsylvania and Washington State have both done an exemplary job in structuring a meaningful and effective public participation program. Perhaps these and other effective models could be evaluated and disseminated to other states in order to improve outreach nationwide.

- Matching Policy for Enhancement Funds. Another significant problem that needs to be addressed by greater federal guidance is the use of inconsistent and unduly restrictive policies for matching the federal funds on enhancement projects. For example, many states refuse to allow local government funding or private contributions to be used toward the required 20 percent match. States are also refusing to consider the value of significant in-kind contributions, such as donated land, buildings, labor, or materials. As a result, many worthwhile enhancement projects are being passed over, notwithstanding enormous contributions and the availability of funding for the project. The historic preservation movement has always depended upon the voluntary contributions and dedicated involvement of local citizens in saving important community resources. We believe the federal government should similarly recognize the value to the American public of such volunteer efforts and donated resources, in addition to local government funds and private contributions. These in-kind contributions are vital to the success of transportation enhancements. The National Trust strongly endorses the use of non-state funds and in-kind contributions for matching purposes, and we urge the FHWA to adopt this policy through guidance or regulations for the states.
- Project Eligibility. The ten categories of enhancements listed in ISTEA were specifically designed to encourage funding for creative projects that are above and beyond environmental mitigation. We commend FHWA for resisting initial efforts by some states to use enhancement funding for inappropriate projects such as noise barriers. However, the states and FHWA division offices still need more specific definitions of what does and does not qualify for funding under the ten enhancement categories. We strongly recommend additional guidance from DOT in this respect, in order to end the inconsistent interpretations currently being followed by the various states.
- Environmental Compliance. Ironically, environmental compliance requirements have occasionally been used as an obstacle to the approval of enhancement projects, even though the vast majority of these projects do not have adverse effects on environmental or historic resources. In other contexts, streamlined procedures have been developed by federal agencies for compliance with the National Environmental Policy Act, the National Historic Preservation Act, and

Section 4(f) of the Department of Transportation Act. As long as safeguards are developed to ensure that adverse environmental impacts are adequately considered, we support the use of these existing mechanisms where appropriate to facilitate project approval.

2. Need for Federal, State and Local Training.

The enhancement program in ISTEA, with all of its variables, demands a strong degree of communication, both within each agency, and among the different governmental entities involved in the program. Through our transportation planning conferences we have learned that the flow of information and advice between the FHWA, the state DOTs, and the Metropolitan Planning Organizations (MPO) has been inconsistent and often inaccurate. We suggest that the national FHWA offices conduct joint training and education programs for their regional and district administrators, similar to the transportation planning conferences that the National Trust has co-sponsored and do so together with state legislators, state DOTs and MPOs, so that information about ISTEA is consistent among all participants in the enhancement program.

3. Need for Better Monitoring and Data Collection at the Federal Level.

Despite the significant investment of public funds in the enhancement program, FHWA has remarkably little information about how those funds are actually being spent by the different states. States are not required to report to FHWA any information other than the total amount of funds spent on enhancement projects each year. This lack of accountability makes it difficult for Congress and the public to evaluate the effectiveness of the enhancement program. Ironically, the national nonprofit organizations involved in the Surface Transportation Policy Project know more about how this money is being spent than FHWA does. FHWA should be collecting much more specific data from the State DOTs on the use of ISTEA enhancement funding. Only with this complete picture of the enhancement program at work across the country can we assess the effect of this law which Congress labored so long to enact.

Thank you for inviting the National Trust to be here today and for your work on improving the nation's transportation programs and policies.

STATEMENT OF
HANK MONTREY, ASSOCIATE DEPUTY CHIEF
NATIONAL FOREST SYSTEM
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
United States House of Representatives

Concerning Implementation Of the Intermodal Surface
Transportation Efficiency Act of 1991 (ISTEA)

April 28, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to offer our views on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The Forest Service has benefited from ISTEA in many ways. We are pleased to share our accomplishments since the enactment of ISTEA.

ISTEA provides for the development of a national intermodal transportation system that is economically efficient and environmentally sound, moves people and goods in an energy efficient manner, and provides a foundation for the Nation to compete in the global economy. In his "Vision of Change for America," President Clinton recognized the need to improve the Nation's highway systems by proposing an increase in the level of funding for Federal-aid Highway programs to the levels contained in ISTEA. The Forest Service strongly supports the Administration's proposal for ISTEA and the opportunities it presents for our Nation's transportation system.

Prior to ISTEA, Forest Service involvement in implementation of previous highway laws was largely confined to the Forest Highway and Public Lands Highway (PLH) program. ISTEA is more comprehensive than past highway laws, focusing considerable emphasis on statewide and metropolitan area planning, rural development, scenic beauty, tourism, bicycle and pedestrian facilities, and prevention of adverse effects on water quality, air quality, and wetlands. It requires an integrated approach by the States, counties, local governments, publics, and Federal agencies working together to optimize its potential.

To fully realize ISTEA's potential, the Forest Service has developed a national strategy entitled "Capturing Opportunities With Forest Service Partners," to support implementation on National Forest System lands. The cornerstone of our strategy is early and continuing participation in the Statewide and Metropolitan Planning Organization (MPO) planning requirements of ISTEA. We are also encouraging our rural community neighbors, State Foresters, and State Land Management agencies to be involved. Our strategy also involves active participation in several of the other ISTEA programs. I'd like to briefly describe some of our activities:

Public Lands Highway Program

Forest Highways, which are included in the Public Lands Highway program under ISTEA, have been an integral part of highway laws since 1916. They are the main access roads to and through the National

Forests under the jurisdiction of and maintained by a public authority. They complement the Forest Service's administrative road and trail network.

Forest Highways are essential to provide access for public use and commodity haul and are identified using prescribed criteria in consultation with state and local agencies. Funding for this program is key to maintaining the value of our current infrastructure investments and are critical to providing necessary improvements to maintain structures that protect water quality and wetlands and adjust road capacities to keep air pollution to a minimum. The annual authorization of approximately \$112,000,000 (Fiscal Years 1993-97) for Forest Highways is approximately twice the annual appropriation of the 1987 highway act and will help address the significant inventory of projects in the Forest Highway program. This tri-agency program (Federal Highway Administration (FHWA), Forest Service, and State/local governments) has served all agencies well in the past and continues to do so under ISTEA.

Proposals under the discretionary portion of the Public Lands Highway program are nominated annually by the States to FHWA, who selects the final projects. Highways under this program are eligible if they pass through public lands and meet other established inventory criteria. Although ISTEA provides preference for projects in those States containing at least 3 percent of the total public lands of the Nation, the "hold harmless" equity adjustment provision of ISTEA makes it difficult to achieve this in practice. Those States receiving "hold harmless" funds must sacrifice other funds equal to those received

under the PLH discretionary program. Some States will not give up the greater flexibility associated with these funds and will choose not to submit PLH projects. As a result, some projects with high priority to public land management agencies are not being proposed.

Highway Timber Bridge Research

ISTEA authorized a research program for Timber Highway Bridges. Because of the Forest Service experience in structural wood research and the existence of the Forest Service Timber Bridge Demonstration project, the FHWA sought Forest Service input and assistance to implement a cooperative research program for wood utilization in transportation structures. The Forest Products Laboratory operated by Forest Service Research at Madison, Wisconsin, was selected by the FHWA as the institution to conduct the Highway Timber Bridge Research. We expect this partnership to continue.

The Soil Conservation Service, working through the St. John Aroostook Resource Conservation and Development Area in Maine, cooperated with the state agencies and the Department of Transportation to initiate the improvement of rural road conditions. This resulted in funding for the construction of two timber bridges under ISTEA for \$375,000 in fiscal year 1992. This is part of a long range plan to build more bridges over the next five years and to create jobs in a State with high unemployment rates that is rich in timber resources. Actions such as this help the rural economy and are vital for revitalizing rural America.

Scenic Byways

In June 1988, the National Forest Scenic Byways Program was initiated, offering recreational motorists a showcase of outstanding scenic beauty and changing forest landscapes. The Forest Service currently has 115 scenic byways and focuses on road corridors that contain scenic vistas and the facilities for enjoying them. Designated byway corridors contain outstanding aesthetic and cultural values and offer many opportunities to provide visual and physical access, demonstrate Forest Service multiple-use management, interpret outstanding resource values, and strengthen service to urban and rural residents, minorities, the physically challenged, the elderly, and the young. These characteristics meet the criteria for the National Scenic Byways Program initiated under ISTEA.

ISTEA provides for the establishment of a National Scenic Byways Advisory Committee, responsible for providing recommendations in the establishment of the National Scenic Byways Program and an All-American Roads Program. The Associate Chief of the Forest Service serves as a representative on that Committee.

The Forest Service serves as an active partner with the States in identifying funding to support the interim Scenic Byways Program. Interim funding is provided through Fiscal Year 1994 as grants to States. The examples below indicate the types of projects that are completed under ISTEA.

- o In West Virginia, the State Department of Transportation received an Interim Scenic Byway grant for \$124,000 for the

Highlands Scenic Byway for signing and other interpretive improvements.

- o In Colorado, the State Department of Transportation, with coordination and assistance from the San Juan National Forest and local interest groups, received a major interim scenic byway grant for the nationally recognized San Juan Skyway Scenic Byway.
- o In the Pacific Coast States of California, Oregon, and Washington, the Pacific Coast Highway, US 1, was selected for an interim scenic byway grant of approximately \$5 million to plan for development and interpretation of the Pacific Coast Scenic Byway.
- o The Iowa Department of Transportation, in cooperation with the Soil Conservation Service, has proposed that the Loess Hills Byway receive funding for the development of a master plan under ISTEA for scenic overlooks, interpretive displays and enhancement of historic and cultural sites. The 221-mile route was named one of America's ten most important byways by Scenic America in fiscal year 1992.

Transportation Enhancements

We believe one of the most exciting provisions of ISTEA is the Transportation Enhancement program which require highway programs to be more environmentally sensitive. ISTEA requires that 10 percent of the Surface Transportation Program be expended on areas that enhance

the environment, such as wetlands, mitigate damage to fish and wildlife habitat, preserve historic sites, contribute to meeting visual quality standards, develop a wide range of bicycle and pedestrian uses, and enhance highway beautification.

Examples of enhancement projects with Forest Service cooperation include the following:

- o FHWA cooperated with many agencies on the "America's Treeways" program which allowed for the planting of trees on highway right-of-ways. Partners included FHWA, National Association of State Foresters (NASF), American Association of State Highway and Transportation Officials (AASHTO), State Department of Transportation Directors, and the Forest Service. These treeways result in lower mowing costs, mitigate global climate change through increased carbon sequestration, and in some areas, serve as living snow fences.
- o The Francis Marion and Sumter National Forests in South Carolina, cooperating with the South Carolina DOT, were successful in obtaining four enhancement projects for vista and trailhead parking, roadside parking, and turn lanes to National Forest attractions.
- o The Washington State Department of Transportation proposed a \$200,000 visitor stop along the Sherman Pass Scenic Byway. They cooperated with the Bonneville Power Administration (BPA), National Park Service, Forest Service, and local citizen groups.

Because of ISTEA's 20 percent matching requirements, the project is temporarily "on hold" because appropriated funds from the Forest Service and the BPA cannot be used to meet the local matching requirements.

Symms National Recreation Trails Fund Act

The Symms National Recreational Trails Fund Act is provided for in Section 1301 of ISTEA. It was funded for the first time in Fiscal Year 1993. Many States are still in the process of establishing guidelines and soliciting for projects. Other States that already had these guidelines have selected projects on National Forest System lands. For example, the Allegheny National Forest in Pennsylvania has received approval for a \$9,970 grant for the Marienville all-terrain vehicle (ATV) trail in cooperation with the State and the Competition Riders Club, and a \$15,000 grant for the Timberline ATV trail. Less than adequate funding for trail maintenance in the past has left us with trails in a condition where they must be reconstructed rather than just maintained.

As funding continues, the Forest Service expects to play an important role in many trails projects. The 120,200 miles of trails managed by the Forest Service will serve as links to the trail transportation network being established between major metropolitan areas.

Rural Economic Development

The Forest Service rural community assistance efforts focus on enhancing the ability of rural communities to compete and thrive as changes occur in their economic conditions. ISTEA language directs

States to involve local officials, including those in rural areas, in the statewide planning process and to address rural economic development issues through ISTEA authorities. We are concerned that the 2-year timeframe in which States are required to have completed new statewide plans may not allow enough time for some rural communities to provide full input into statewide planning. This may require some rural communities to be phased into the statewide planning process over a longer period of time. To address this concern, the Forest Service has assisted with the planning and coordination of a series of workshops aimed at informing and motivating local officials from small towns and rural communities. By increasing awareness among local officials, rural communities can be more effective in the new processes developed by States and have an increased capacity to form coalitions or conduct collaborative planning processes.

Closing

In summary, the many provisions of ISTEA offer land management agencies greater flexibility to address surface transportation issues. The Forest Service is actively working in partnership with Federal, state and local agencies, and rural and urban communities to realize the benefits offered by ISTEA. We will continue to play an active role in the implementation of this Act.

Mr. Chairman, this concludes my prepared remarks. I will be glad to respond to any questions you or members of the Subcommittee may have.

COALITION FOR RECREATIONAL TRAILS

TESTIMONY

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE

ON

PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

ON

THE INTERMODAL SURFACE TRANSPORTATION

EFFICIENCY ACT OF 1991

Roy W. Muth
Chair
Coalition for Recreational Trails
3975 University Drive #310
Fairfax, Virginia 22030
(703) 273-9606
April 28, 1993

U. S. HOUSE OF REPRESENTATIVES
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

Oversight Hearing of the Surface Transportation
Subcommittee on the Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)
April 28, 1993

Testimony of Roy W. Muth, Chair
Coalition for Recreational Trails

Mr. Chairman and members of the Subcommittee, my name is Roy Muth and I serve as Chair of the Coalition for Recreational Trails. I appreciate the opportunity to come before you today to present testimony about the National Recreational Trails Trust Fund. As you know, the National Recreational Trails Fund Act (Title I, Part B of the Intermodal Surface Transportation Efficiency Act of 1991) established the National Recreational Trails Trust Fund. The Act authorized a transfer of revenues to this trust fund from the Highway Trust Fund in amounts which correspond to a portion of receipts from nonhighway recreational fuel taxes. In so doing, the Act applied the user-pay/user-benefit philosophy which is the basis for establishing the Highway Trust Fund itself.

The Coalition for Recreational Trails (CRT) was formed in January 1992 for the sole purpose of ensuring adequate funding for this new Trails Trust Fund. CRT's members are primarily national organizations, now numbering twenty-five, which represent the interests of trail users -- both motorized and nonmotorized recreationists. A membership roster is attached to this statement.

Americans are seeking opportunities to enjoy recreational travel on trails as never before. No longer are trails only for the "rugged individualist" pursuing a solitary trek through breathtaking wilderness. Trails are found everywhere and trail users include young people and senior citizens, individuals and organized groups, the physically challenged and the physically fit.

The activities that occur on trails are as diverse as the users. Traditional activities like walking, back packing, horseback riding, cross country skiing and bicycling have been joined by newer activities like mountain biking and snowmobiling.

However, trails are not just important for their recreation/transportation value. The increased economic development that generally follows the opening of a trail or greenway should not be forgotten. Let me just give you a couple of examples.

- In Colorado, city leaders in Pueblo decided to invest in trails along the Arkansas River and Fountain Creek to attract new businesses as part of its economic

revitalization effort. This move is now credited by city fathers as one of the most important components in turning around Pueblo's economic decline.

- In Wisconsin, users of the Elroy Sparta Trail averaged expenditures of \$25.14 per day for trip-related expenses in 1988. Total 1988 trail user expenditures were over \$1.2 million. Approximately 50% of the users were from out of state.¹

It is fair to conclude that trails have multiple values and their benefits reach far beyond recreation. Trails can enrich the quality of life for individuals, make communities more livable, and protect, nurture and showcase America's grandeur by traversing areas of natural beauty, distinctive geography, historic significance, and ecological diversity. Trails can have a transportation purpose too. Trails are important for the nation's health, economy, resource protection and education.

The growing demand for additional trail mileage far exceeds the funds available. An ongoing, informal CRT survey, which has produced responses from 30 states and the District of Columbia, indicates a need for funding current trail projects totaling \$322.4 million. A summary of those responses is attached to this statement.

As you may recall, the authorizing legislation contained in ISTEA sets an annual limitation on obligations of \$30 million for FY 1992 through FY 1997. In FY 1992, no funds were appropriated. In 1993, only \$7.5 million was appropriated. Therefore, of the \$60 million that was authorized to be used on trail projects, only \$7.5 million has been allocated to the program. We do understand, however, that the Administration has included \$15 million in the FY 1994 budget and we are appreciative of the program support that this increase over current funding represents.

I would like to use the Pennsylvania program to illustrate how these funds are being used.² The Pennsylvania Department of Environmental Resources received applications for 87 projects eligible for funding under the Act. The projects can be broken down by applicant classification as follows:

State Parks	5
State Forests	14
National Forest Service	2
National Park Service	1
Local Government	38
Private Organizations	24
Private Individuals	<u>3</u>
TOTAL	87

The types of projects include:

- Maintenance
- Restoration
- Development of Trail Head/Side Facilities
- New Trail Development
- Easement Acquisition
- Fee Simple Acquisition

The federal funds requested in just the first year of the program total \$1,120,124. The funds allocated to Pennsylvania under the Act total \$231,837. The estimated total cost for all projects is \$3,565,181. Due to the limited amount of funds made available for FY 1993, the maximum federal grant allowed for any one project is \$15,000 and the state will only be able to fund 17 of the 87 eligible projects. We believe that the problem encountered by Pennsylvania will be repeated all across the country as the program is implemented.

The problem of obtaining full funding as authorized has been made more difficult because contract authority was not conferred in the authorizing legislation. To resolve that problem, CRT recommends that the National Recreational Trails Fund Act be added to Title 23 of the U.S. Code. We do recommend a number of slight changes, however. The Trails Fund Act has an eligibility requirement that states by law reserve a reasonable estimation of the revenues received from nonhighway recreational fuel use for providing and maintaining recreational trails. This serves as the equivalent of a state match. Therefore, we request that the Trails Fund Program be exempted from Section 120 of Title 23, which requires the 80%-20% matching ratio. Further, the provisions in Title 23, Section 217 (h)(which restricts motorized use) and Section 217 (i) (which requires a transportation purpose) are not applicable to the Trails Fund Program, which clearly encourages multiple use recreational trails, and provides for both motorized and nonmotorized users. And finally, although related to the Highway Trust Fund, the National Recreational Trails Trust Fund was intended to be a separate fund for recreational trails. Therefore, we ask that Section 104 (b)(3) (regarding hold harmless amounts) and Section 157 (a) (regarding minimum allocation amounts) not be applicable to the Trails Trust Fund Act. In other words, we are asking that the apportionments through the National Recreational Trails Funding Program not be calculated as discretionary funds that would reduce the hold harmless and minimum allocation funds that some state Highway Departments receive through Title I, Part A of ISTEA.

There is a second problem that we would like to bring to the attention of the Subcommittee which has to do with the estimate of the amount of fuel used by off-road recreation vehicles in each state. Several estimates have been made or are being made; however, we believe those estimates are flawed.

The Trails Fund Act specifies that in determining state allocations, the Secretary of Transportation must consider the amount of nonhighway recreational fuel used during the preceding year in each state. That was done as evidenced by the Federal

Highway Administration's allocation schedule, which is attached to this testimony.

In addition, the Act requires that the Secretary of the Treasury shall, within one year after enactment, adjust the amount of funds being deposited in the National Recreational Trails Trust Fund so that it corresponds to the amount of revenues received in the Highway Trust Fund from nonhighway recreational fuel taxes. It is my understanding that the Office of Tax Analysis of the Treasury Department has completed that study although I don't believe it has been forwarded to the Congress.

Both Secretaries are permitted to use vehicle registration and use data to make their estimates. Both the International Snowmobile Industry Association and the Motorcycle Industry Council provided data to the Departments of Transportation and Treasury. However, I do not believe an industry group or a user group provided data on fuel used by four-wheel drive vehicles. We believe that fuel consumed by four-wheel drive vehicles used off road is greater than the amount of fuel used by snowmobiles, motorcycles and all-terrain vehicles combined.

In order to obtain accurate estimates, CRT recommends that the Trails Fund Act be amended to require the Secretary of Transportation to conduct one national survey of nonhighway recreational fuel consumption by state. The study would be conducted by a private sector organization. Funding for the survey would be in addition to the funds for federal program administration (three percent) provided in the Act (Section 1302(d)(1)). We estimate such a study would cost \$3 million.

This recommendation is based upon the value of the information obtained from a similar study, the National Recreational Boating Survey, which provided fuel use data for recreational purposes for all types of watercraft. The one-year study was conducted by Price Waterhouse under contract with the Department of the Interior and was completed in October 1991 at a cost of \$2.2 million. As a result of this study, funding for the Aquatic Resources Trust Fund was based on accurate, justifiable data.

Mr. Chairman, the investment in these vital national resources is badly needed. We urge your leadership and that of the Subcommittee in making the changes we have recommended so that adequate funds will be appropriated and the correct amounts allocated for the National Recreational Trails Fund Program.

¹ Economic Impacts of Protecting Trails and Greenway Corridors published by Rivers, Trails and Conservation Assistance, National Park Service, 1991

² Report from Ralph Romeo, Director, Program Planning and Development, Pennsylvania Department of Environmental Resources, April 22, 1993

Coalition for Recreational Trails
Membership Roster
National

American Hiking Society
P.O. Box 20160
Washington, D.C. 20041-2160
Tel: (703) 385-3252
Fax: (703) 754-9008
Ms. Susan A. Henley
Executive Director

American Horse Council
1700 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 296-4031
Fax: (202) 296-1970
Mrs. Amy W. Mann
Director of Sport and
Recreation

American Motorcyclist
Association
1225 Eye Street, N.W. #560
Washington, D.C. 20005
Tel: (202) 682-4750
Fax: (202) 789-0406
Mr. James Bensberg
Washington Representative

American Recreation Coalition
1331 Pennsylvania Ave., N.W.
Suite #726
Washington, D.C. 20004
Tel: (202) 662-7420
Fax: (202) 662-7424
Mr. Derrick A. Crandall
President

American Trails
c/o Montana Division of Fish,
Wildlife and Parks
1420 East 6th Avenue
Helena, Montana 59620
Tel: (406) 444-4585
Fax: (406) 444-4952
Mr. Robert Walker
Chair

American Volkssport
Association
5457 Enberend Terrace
Columbia, Maryland 21045
Tel: (410) 992-4665
Fax: None
Mr. Julian Bauer
President

Back Country Horsemen of
America
4408 Wible Road
Bakersfield, California 93313
Tel: (805) 832-1150
Fax: (805) 832-0971
Mylon Filkins
Chairman

Bicycle Institute of America
1818 R Street, N.W.
Washington, D.C. 20009
Tel: (202) 332-6986
Fax: (202) 332-6989
Mr. William C. Wilkinson III
Executive Vice President

Bikecentennial
629 Gist Avenue
Silver Spring, Maryland 20910
Tel: (301) 585-4706
Fax: (301) 587-1239
Ms. Kit Keller
Member Representative

Blue Ribbon Coalition
P.O. Box 5449
Pocatello, Idaho 83202
Tel: (208) 237-1557
Fax: (208) 237-1566
Mr. Clark L. Collins
Executive Director

Cycle America Regional
Directories
147 S. River Street #222
Santa Cruz, California 95060
Tel: (408) 426-7702
Fax: (408) 425-8533
Mr. Martin Krieg
Publisher

International Association of
Snowmobile Administrators
c/o Utah Division of Parks and
Recreation
1636 W. North Temple
Salt Lake City, Utah 84116
Tel: (801) 538-7342
Fax: (801) 538-7315
Mr. Scott A. Behunin
Chairman

International Mountain
Bicycling Association
P.O. Box 412043
Los Angeles, California 90041
Tel: (818) 792-8830 (m ofc.)
Fax: (818) 796-2299 (m ofc.)
Tel: (818) 704-7396
Fax: (818) 704-4827
Mr. Jim Hasenauer
President

International Snowmobile
Industry Association
3975 University Drive #310
Fairfax, Virginia 22030
Tel: (703) 273-9606
Fax: (703) 273-9271
Mr. Roy W. Muth
President and Chief Executive
Officer

The League of American
Wheelmen
1400 16th Street, N.W. #710
Washington, D.C. 20036
Tel: (202) 462-8376
Fax: (202) 232-2617
Mr. Allen Greenberg
Government Relations Director

Motorcycle Industry Council
1235 Jefferson Davis Highway
Arlington, Virginia 22202
Tel: (703) 521-0444
Fax: (703) 521-1023
Mr. Robert M. Dingman
Government Relations
Specialist

National Association of State
Trail Administrators
c/o Division of Parks &
Outdoor Recreation
1313 Sherman Street, Room 618
Denver, Colorado 80203
Tel: (303) 866-3203 ext. 306
Fax: (303) 866-3206
Mr. Stuart H. Macdonald
Co-Chair

Virginia Department of
Conservation and Recreation
203 Governor's Street #326
Richmond, Virginia 23219
Tel: (804) 786-4493
Fax: (804) 786-6141
* Alternate for Stuart
Macdonald
Ms. Angela LaCombe *

National Campers and Hikers
Association
4555 North 24th Street
Arlington, Virginia 22207
Tel: (703) 524-6998
Fax: None
Mr. Edwin Kibler
National Legislative Director

National Recreation and Park
Association
2775 South Quincy Street #300
Arlington, Virginia 22206-
2204
Tel: (703) 578-5540
Fax: (703) 671-6772
Mr. R. Dean Tice
Executive Director

The Rails-to-Trails
Conservancy
Suite 300
1400 16th Street, N.W.
Washington, D.C. 20036
Tel: (202) 797-5400
Fax: (202) 797-5411
Ms. Marianne Fowler
Government Affairs Manager

Recreation Vehicles Dealers
Association

3251 Old Lee Highway #500
Fairfax, Virginia 22030
Tel: (703) 591-7130
Fax: (703) 591-0734

Mr. Robert Strawn
President and Chief Staff
Executive

Specialty Vehicle Institute of
America

1235 Jefferson Davis Highway
Arlington, Virginia 22202
Tel: (703) 521-0444
Fax: (703) 521-1023

Mr. John W. English
Director, State Government
Affairs

Student Conservation
Association

1800 North Kent Street #1260
Arlington, Virginia 22209
Tel: (703) 524-2441
Fax: (703) 524-2451

Mr. T. Destry Jarvis
Executive Vice President

United 4 Wheel Drive
Association

R.D. #2, Box 190
Felton, Pennsylvania 17322
Tel: (717) 246-2162
Fax: (717) 244-1693

Mr. Dave Hook
Director, Environment Affairs

Ski Industries America

8377B Greensboro Drive
McLean, Virginia 22102
Tel: (703) 556-9020
Fax: (703) 821-8276

Mr. Roger Lohr
Manager of Education

Regional, State, Local Members

Laurel Lake Dirt Riders Club
312 Dandilion Road
Millville, New Jersey 08332
Tel: (609) 327-8752
Mike Rain
President

Northern Virginia Trail Riders
8313 Accotink Road
Lorton, Virginia 22079
Tel: (703) 339-5131
Robert E. Hammond
President

Planning Department
Operations Building
Virginia Beach, Virginia 23456
Tel: (804) 427-4621
Fax: (804) 426-5667
Ms. Christine Breddy

Virginia Volkssport
Association
5505 Helmsdale Lane
Alexandria, Virginia 22310
Tel: (703) 922-1885
Mr. Ronald P. Hamner
President

Michigan Snowmobile
Association
5181 Plainfield, N.E., Suite C
Grand Rapids, Michigan 49505
Tel: (616) 361-2285
Mr. Richard Krupp
President

Colorado Snowmobile
Association
Post Office Box 474
South Fork, Colorado 81154
Tel: (719) 873-5724
Mr. Bill Burns
President

Carroll County Equestrian
Council
c/o Carroll County Dept. of
Recreation and Parks
125 N. Court Street
Suite 205
Westminster, Maryland 21157
Tel: (410) 857-2103
Jeff Degitz

Monroe County Parks and
Recreation Department
119 West 7th
Bloomington, Indiana 47404
Tel: (812) 333-3800
Ms. Laura Wright
Office Manager

Trail Projects Eligible for Funding Under the
National Recreational Trails Fund Act

Current Funding Needs

Alaska	\$ 625,000
Arizona	6,266,000
California	30,000,000
Colorado	5,417,332
District of Columbia	1,200,000
Delaware	30,000
Florida	4,100,000
Georgia	212,000
Illinois	575,000
Indiana	3,500,000
Iowa	2,259,603
Kansas	14,834,594
Kentucky	512,096
Maryland	1,109,500
Michigan	1,810,000
Minnesota	10,000,000
Missouri	578,384
New Jersey	149,000,000
New York	2,500,000
North Carolina	8,781,000
North Dakota	2,255,665
Ohio	670,270
Oklahoma	182,850
Oregon	156,000
Pennsylvania	68,600,000
South Carolina	750,000
Texas	3,150,000
Vermont	1,000,000
Virginia	1,000,000
Wisconsin	1,116,500
Wyoming	225,000

TOTAL

\$322,416,794

NOTE: Individual state data is available from the Coalition for Recreational Trails on request.

Coalition for Recreational Trails
Suite 310
3975 University Drive
Fairfax, Virginia 22030
Tel: (703) 273-9606
Fax: (703) 273-9271

ATTACHMENT A-2

**NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM
STATE-BY-STATE ALLOCATIONS**

Formula established by the Symms National Recreational Trails Act of 1991

STATE	Estimated Off-Road Recreational Use of Gasoline (Gallons)	Percent of National Total	Allocation Based on Share of Fuel Use	Equal Allocation	TOTAL ALLOCATION
Alabama	11,350,786	2.3413	\$85,163	\$69,952	\$155,115
Alaska	5,348,134	1.1031	\$48,126	\$69,952	\$118,078
Arizona	4,089,203	0.8436	\$36,680	\$69,952	\$106,632
Arkansas	9,082,320	1.8739	\$84,143	\$69,952	\$154,095
California	29,718,458	6.1298	\$222,971	\$69,952	\$292,923
Colorado	6,940,038	1.4315	\$52,070	\$69,952	\$122,022
Connecticut	3,580,931	0.7386	\$32,867	\$69,952	\$96,819
Delaware	888,166	0.1832	\$8,664	\$69,952	\$76,616
Dist. of Columbia	0	0.0000	\$0	\$69,952	\$69,952
Florida	17,236,272	3.5532	\$129,320	\$69,952	\$199,272
Georgia	14,789,532	3.0506	\$110,943	\$69,952	\$180,895
Hawaii	0	0.0000	\$0	\$69,952	\$69,952
Idaho	4,072,123	0.8399	\$30,352	\$69,952	\$100,304
Illinois	11,383,259	2.3479	\$85,406	\$69,952	\$155,358
Indiana	7,387,812	1.5431	\$54,800	\$69,952	\$124,752
Iowa	7,806,380	1.6102	\$58,570	\$69,952	\$128,522
Kansas	3,699,078	0.7630	\$27,753	\$69,952	\$97,705
Kentucky	7,740,102	1.5985	\$58,072	\$69,952	\$128,024
Louisiana	8,067,073	1.6839	\$60,826	\$69,952	\$130,778
Maine	11,280,422	2.3226	\$84,683	\$69,952	\$154,635
Maryland	4,822,664	0.9967	\$36,183	\$69,952	\$106,135
Massachusetts	7,103,709	1.4682	\$53,298	\$69,952	\$123,250
Michigan	43,798,827	9.0340	\$328,612	\$69,952	\$398,564
Minnesota	33,287,068	6.8639	\$249,745	\$69,952	\$319,697
Mississippi	7,145,390	1.4738	\$53,410	\$69,952	\$123,362
Missouri	9,944,786	2.0321	\$74,444	\$69,952	\$144,396
Montana	7,874,972	1.6263	\$59,084	\$69,952	\$129,036
Nebraska	3,770,987	0.7778	\$28,293	\$69,952	\$98,245
Nevada	1,768,976	0.3649	\$13,272	\$69,952	\$83,224
New Hampshire	6,917,620	1.4268	\$51,901	\$69,952	\$121,853
New Jersey	7,165,656	1.4789	\$53,764	\$69,952	\$123,716
New Mexico	2,936,665	0.6088	\$15,281	\$69,952	\$85,233
New York	20,816,829	4.2937	\$156,184	\$69,952	\$226,136
North Carolina	13,757,873	2.8377	\$103,222	\$69,952	\$173,174
North Dakota	2,652,238	0.5471	\$19,809	\$69,952	\$89,761
Ohio	11,504,543	2.3730	\$86,316	\$69,952	\$156,268
Oklahoma	5,396,283	1.1543	\$41,988	\$69,952	\$111,940
Oregon	5,213,167	1.0757	\$39,128	\$69,952	\$109,080
Pennsylvania	21,576,566	4.4886	\$161,885	\$69,952	\$231,837
Puerto Rico	0	0.0000	\$0	\$69,952	\$69,952
Rhode Island	632,808	0.1309	\$6,300	\$69,952	\$76,252
South Carolina	5,081,815	1.0480	\$38,128	\$69,952	\$108,080
South Dakota	2,492,866	0.5142	\$18,783	\$69,952	\$88,735
Tennessee	13,482,827	2.7828	\$101,234	\$69,952	\$171,186
Texas	21,104,354	4.3539	\$198,943	\$69,952	\$268,895
Utah	5,118,143	1.0557	\$38,080	\$69,952	\$108,032
Vermont	4,283,186	1.2966	\$47,156	\$69,952	\$117,108
Virginia	10,492,383	2.1642	\$78,722	\$69,952	\$148,674
Washington	7,356,637	1.5174	\$55,197	\$69,952	\$125,149
West Virginia	5,963,896	1.2386	\$44,733	\$69,952	\$114,685
Wisconsin	22,331,824	4.6082	\$167,531	\$69,952	\$237,483
Wyoming	2,844,132	0.5886	\$21,329	\$69,952	\$91,281
USA TOTAL	484,819,523	100.0000	\$3,637,496	\$3,637,504	\$7,275,000



Comments on the Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)

to the

Committee on Public Works and Transportation
Subcommittee on Surface Transportation
United States House of Representatives

by

Susan Perry

Senior Vice President, American Bus Association
Chair, Travel and Tourism Government Affairs
Council Working Group on Transportation

April 28, 1993

The Travel and Tourism Government Affairs Council appreciates this opportunity to present the views of the United States travel and tourism industry on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). I am Susan Perry, and I have been privileged to appear before this Subcommittee on many occasions as Senior Vice President of Government Relations for the American Bus Association. Today I am appearing before you as chair of the Government Affairs Council's Working Group on Transportation.

The Council is comprised of representatives from every segment of the travel and tourism industry, including all modes of transportation, accommodations, food services, travel agents, tour sales and operations, attractions and recreation facilities, as well as state and local destination marketing organizations. The American Bus Association and 36 other national industry organizations are members of the Council, along with a dozen major corporate leaders. The members of the Council are listed at the end of this statement.

Profile of the United States Travel and Tourism Industry

Travel and tourism is one of the nation's most dynamic and diverse industries. As a \$360 billion industry in America, generating approximately 6.1% of our GNP, it ranks as our third largest retail industry after automobile services and grocery stores. Six million

jobs are provided directly by travel and tourism businesses and another two and a half million indirectly, making it our country's second largest employer, after health services. In 37 states, travel and tourism is among the top three sources of jobs. During the 1980s, this industry generated new jobs at a rate twice as high as that of all other American industries. Another compelling sign of the economic importance of travel and tourism is the fact that it has become our nation's largest export; the money spent by international visitors to the United States makes travel and tourism our biggest earner of foreign exchange.

ISTEA: A Landmark for Travel and Tourism

As this Subcommittee well knows, the enactment of ISTEA in 1991 was a truly historic development in the history of surface transportation in our country. This huge and complex legislation defined the "post-Interstate" era of surface transportation. The Committee on Public Works and Transportation, and this Subcommittee in particular, are to be highly commended for the extraordinary commitment and hard work they devoted to the successful completion of this legislation during more than two years of consideration.

While ISTEA is innovative -- even unprecedented -- in many respects, for travel and tourism it is a landmark. Never before has major surface transportation legislation given such

recognition to the needs of travel and tourism. Never before has such legislation afforded so many specific opportunities for the travel and tourism industry to participate directly in the formulation of transportation policy at all levels of government.

For the first time, every state is now mandated to give consideration in its required statewide transportation plan to the needs of "recreational travel and tourism," as well as to such tourism related concerns as "international border crossings and access to ports, airports, intermodal transportation facilities . . . national parks, recreation and scenic areas, monuments and historic sites." Although the corresponding planning criteria for metropolitan planning organizations in the statute does not refer to "recreational travel and tourism," it does require consideration of the other tourism related concerns listed above.

For the first time, several specific sections of major surface transportation legislation are, in ISTEA, directly applicable to travel and tourism. In particular, the establishment of a national scenic byways program, the authorization of expenditures from the Surface Transportation Program (STP) for "transportation enhancement activities," and the authorization of projects for the development of tourism and recreational travel technical assistance programs under the Rural Technical Assistance Program represent unprecedented recognition of the significant role that surface transportation expenditures can have directly on the economic

vitality of regions and communities through enhancing the growth of travel and tourism. In addition, ISTEA funding authorized for road projects on or adjacent to Federal lands now includes "transportation planning for tourism and recreational travel."

Travel and tourism has, of course, by definition, always been dependent on safe and efficient transportation. To the extent that ISTEA results in expanded and improved surface transportation systems, our industry benefits. The significance of ISTEA to travel and tourism, however, goes beyond better roads and transit systems, as critical as they are. With the enactment of ISTEA, Congress and the nation have recognized that surface transportation has an impact on our economy extending beyond the movement of goods and people. The nature and location of our roads affect local and regional economic development. Travel and tourism is clearly one of the principal manifestations of that impact in terms of economic development.

These comments will first examine the impact ISTEA has had on relationships between travel and tourism interests and transportation agencies. We will then make several policy recommendations about sections of the statute that are of unique concern to our industry, particularly the \$80 million scenic byways program and the \$2.4 billion transportation enhancements program. First, however, we want to emphasize a vital ISTEA concern which travel and tourism shares with many other industries.

The National Highway System

It is vitally important to the nation that the complete National Highway System (NHS) called for by ISTEA be completed expeditiously. This will be America's predominant highway network for the next century. The 132,000 - 178,000 miles of the NHS, only about four percent of all road mileage in the United States, will carry the great bulk (40%) of all highway traffic, including most of the millions of Americans and visitors from other countries who power the economic engine we know as travel and tourism. The Secretary of Transportation will send the proposed NHS to Congress later this year, and Congress must approve the final NHS by September 30, 1995, or substantial NHS and interstate maintenance funds could be lost. It can be expected that there will be objections to the proposed NHS for a variety of reasons. Some will prefer more emphasis on purely local transportation projects; others will protest what they perceive as excessive road building; others will object to the cost.

We urge this Subcommittee and the Congress not to allow these concerns to delay unduly the imperative of acting swiftly on the NHS. Completion of the full NHS is of vital importance to the travel and tourism industry, as well as to the economy of the nation.

The Impact of ISTEA on Relations Between Transportation Agencies
and Travel and Tourism Interests

As already explained, it is clear that ISTEA envisions much greater involvement of travel and tourism interests in surface transportation policy-making, and much greater recognition of the importance of travel and tourism by transportation agencies.

In this regard, we believe the Federal Highway Administration (FHWA) has done an exemplary job of working with the travel and tourism industry in the agency's implementation of ISTEA. They have consistently demonstrated a clear understanding of the new relationships created by ISTEA between surface transportation and travel and tourism. FHWA senior staff have been very accessible to the industry, including making many presentations to travel and tourism meetings and conferences. They have also emphasized to state and local transportation agencies the necessity of developing new relationships with the travel and tourism industry.

In the state governments, relations between the travel and tourism industry and transportation authorities have been more variable. As a measure of this relationship, the Travel and Tourism Government Affairs Council recently surveyed all fifty state travel directors to determine their views of their relationships with their state transportation colleagues. A copy of our questionnaire is attached to this testimony. Replies were received from 32 state

travel directors. Following is a summary interpretation:

There is clearly wide knowledge of ISTEA's significance to travel and tourism on the part of the state travel directors. 59% of the respondents indicated they are "very familiar" with "the tourism-related program funding provisions of ISTEA." 38% indicated they are "somewhat familiar." Only one respondent indicated "not very familiar."

This understanding of the importance of ISTEA to travel and tourism is further shown by the fact that 91% of the responding state travel offices have held discussions with their state transportation departments regarding tourism-related programs that could be initiated with ISTEA funds.

When asked to characterize their state transportation department's reaction to the tourism-related program opportunities provided by ISTEA, the responses of those state travel directors who have held discussions with their state transportation departments were very encouraging, although some caveats are necessary. The encouraging data are that 41% of the responding travel directors say that their transportation departments are "very interested in pursuing opportunities to benefit state tourism," and 48% of the respondents believe their transportation colleagues are at least "somewhat interested." Only 10% say there is no interest at all. It should also be noted that two of the three travel directors who have yet

to meet with their transportation departments expect that, when such meetings do occur, transportation officials will be "somewhat interested in pursuing opportunities to benefit state tourism."

Although these data are encouraging, they must be interpreted cautiously. First, while we believe that the 64% response rate to this survey is excellent, we cannot forget that 18 states did not respond. There is, of course, no way to know with certainty what their responses would have been, but it is not unreasonable to assume that more of the nonrespondents would have indicated less knowledge of ISTEA's travel and tourism implications, and less involvement with the state transportation departments. Second, in their open-ended comments, many of the state travel directors, even several of those who indicated their state transportation departments are "somewhat interested" in pursuing tourism opportunities, expressed criticisms or reservations about those relationships. The travel director of one of our largest states, for example, who felt so strongly that additional comments were telephoned, declares that the transportation department in that state "never saw ISTEA as a means of economic development -- just as more highway paving." Recounting several disputes between the travel office and the transportation department, this official believes it "was a big mistake to put scenic byways and other tourism related programs in the hands of the state transportation department."

Additional selected critical comments by other state travel directors included:

"Overall I would say that our DOT has been receptive, but certainly not eager to look at tourism related projects through ISTEA. They are very territorial of this program, however, they have obtained a grant to develop a scenic byways program. We are concerned about what level of investment they will make after a program is established."

"There is confusion, as transportation departments do not traditionally have a wealth of knowledge regarding tourism issues."

"Transportation officials don't want to spend money on tourism programs until all money has been appropriated."

"The Act is still misunderstood by many state officials."

"(Our) DOT is not cooperative with tourism related ISTEA issues. We need Federal pressure to make them comply."

"My perception is that they think (tourism development projects) are a hassle. (The state transportation officials) prefer just to build roads. They will do only what they are pressured to do."

"State transportation offices seem to not really want to share information."

On the other hand, there were several highly positive comments:

"This is a critically important source of funding for tourism projects -- we need this program and others like it."

"We are moving forward in a very positive direction."

"ISTEA funds are very important to (our region) to improve highways and to attract tourism dollars into the state."

"From the very beginning there has been a close working relationship between tourism and transportation. Together we have launched a number of meetings across the state to bring together community leaders in the planning and development of funding requests."

The travel directors were also asked to identify those projects or activities that, over the next three years, they expect their states to pursue for ISTEA funding opportunities. All but one activity (archaeological planning and research) were designated by at least a third of the respondents. It should not be surprising to see that the greatest number (78%) indicated the development of scenic or historic highway programs would be a prime ISTEA funding goal. The next most likely prospect for such funding (69%) is closely related, i.e. construction of pedestrian and/or bicycle facilities, rest areas, turn-outs, shoulder improvements, passing lanes, overlooks, and/or interpretive facilities along scenic routes. Seven other projects were judged as likely ISTEA funding opportunities by 50% or more of the respondents, including preservation of abandoned railway corridors and conversion for pedestrian use or bicycle trails, landscaping and other scenic beautification, protection of historical and/or cultural resources along scenic routes, and development and/or provision of tourism information.

Several of the open-ended comments were directed to potential project for which ISTEA funding is not specifically provided, with one particular purpose receiving prominent attention:

"(Our state) had hoped that with ISTEA we could find (funding) for travel information centers."

"It should be easier to get funding for visitor center renovation. The law seems to be geared toward rest areas -- but visitor centers serve both functions."

"Use of ISTEA funds to build travel information center renovation and development would create thousands of tourism industry jobs."

"The program should fund technology applications for traveler services and information."

In summary, we believe the responses to this brief survey paint an encouraging picture of the impact of ISTEA on relations between state travel offices and transportation agencies. ISTEA seems to have broadened the lines of communication and promoted greater coordination and cooperation on issues and projects of mutual concern. The learning process is continuing, of course, and in a number of states progress has been much slower. In at least several states, state travel officials have been greatly frustrated by the lack of cooperation from their transportation officials. It should also be emphasized that this survey was directed only to state officials. We suspect that a survey of local officials would produce far less positive results. Although ISTEA gives unprecedented authority in transportation planning to Metropolitan Planning Organizations (MPOs), we have seen very little evidence that local travel and tourism interests have become involved in such MPO activities.

Policy Recommendations

Realizing the commitment made in ISTEA to closer coordination between surface transportation programs and travel and tourism, in order to enhance the ability of travel and tourism to generate jobs

and promote economic growth, the Travel and Tourism Government Affairs Council respectfully makes the following observations and recommendations.

Scenic Byways

No other part of ISTEA has greater potential impact on travel and tourism than the national scenic byways program. This program has made a promising, but slow start. The interim grants program is now in its second year and has stimulated substantial interest from state and local travel and tourism organizations. Indeed, so great is the level of interest that the applications received this fiscal year for the interim program are more than three times the \$10 million that is available. The Scenic Byways Advisory Committee has met twice and is progressing towards development of appropriate criteria and guidelines.

We would, however, call the Subcommittee's attention to two troublesome aspects of the program. First is the problem presented by ISTEA's "minimum allocation" formula. ISTEA in section 1013 guarantees that any state that does not receive at least 90% of the motor fuel taxes paid by its citizens will receive a supplemental payment beyond its formula apportionment. Scenic byway funding counts toward the 90% guarantee, which means that these so-called "donor states" have a considerable incentive to reject scenic byways funding, which can only be used for that purpose and requires time and effort to submit applications, when they can

receive the same amount of funding by automatic formula with no restrictions on use. We do not believe this outcome was intended by Congress and we strongly recommend that ISTEA be amended to make clear that scenic byways funding is not to be included as part of the 90% guarantee for donor states.

The second issue of at least potential concern to the travel and tourism industry with regard to the scenic byways program is that of outdoor advertising. The general position of the Government Affairs Council with regard to such advertising is that we support the continuation of current law and the development of government policy that preserves essential access of travel and tourism businesses to privately-owned outdoor advertising. We believe the restrictions currently imposed on outdoor advertising by the Highway Beautification Act, which, in essence, bar signs within view of Federal aid primary roads, interstates, and the new NHS, except in areas zoned commercial or industrial or in areas in which there is bona fide commercial or industrial activity, provides sufficient protection for scenic byways, without denying a critical means of advertising to the travel and tourism businesses operating nearby. It has always been understood that local economic development is one of the prime justifications for a scenic byways program. It would be counter-productive to achievement of this goal to make it more difficult for local businesses to benefit from the scenic byways traffic. We believe it would be very helpful for this Subcommittee to make clear that the scenic byways program

is to be neutral with regard to outdoor advertising, neither expanding nor restricting current law.

Transportation Enhancements

Authorizing funding for those "transportation enhancements" defined in the legislation is one of ISTEA's most creative and wisest innovations, probably the clearest demonstration of the essential linkage between travel and tourism, surface transportation, and local economic development.

We would, however, recommend at this point that construction and renovation of highway information centers be added to the list of eligible transportation projects, as proposed by several of the state travel directors who responded to our survey as reported above. The ultimate decision as to which projects would receive funding would still, of course, rest with the states. It seems reasonable, however, if not compelling, to provide support to information centers, which would play a significant role in informing and directing travelers about those scenic, historic and archaeological sites, scenic byways, historic preservation and other projects otherwise funded by ISTEA. It would be thoroughly in keeping with the emphasis placed by ISTEA on the transportation-economic development linkage.

TODS and Logos

Substantial reliance is placed on the use of tourist oriented directional signage (TODS) or "logo" signs to guide and direct drivers on the interstates and Federal-aid primary system. Over time, questions of effectiveness (how helpful are they to drivers) and equity (is equal access fairly given all potential businesses who desire signage space) have increasingly been raised.

Experience indicates that the proliferation of logos and TODS may create potential traffic hazards. With an aging population continuing to rely heavily on private automobiles, more and more drivers with reduced visual acuity and reaction times travel on our roads. Driving in night or in inclement weather increases driver confusion at interchanges when trying quickly to decipher a plethora of symbols in time to make a decision to leave the roadway, change lanes, signal the intent to other drivers and approach the exit ramp in a safe manner.

In addition, there is concern that the program is so fragmented state by state that businesses operating in more than one state have difficulty participating in multi-state programs because of differing fees, access requirements and conditions of use. Furthermore, local independent businesses without large advertising budgets to establish nationally recognizable logos are at a distinct disadvantage. On the other hand, to place restrictions on nationally recognized logos may penalize local franchisees.

Congress was aware of these problems when it enacted ISTEA and thus directed the Secretary of Transportation to conduct a study of "the participation in the use of TODS and the practices of the states with respect to the use of such signs." We look forward to the completion and release of that study at the earliest possible date, so that the private sector can work with Congress and the FHWA to develop the most equitable and effective TODS program.

Intermodalism

No industry has a greater stake in a truly intermodal transportation system than travel and tourism. Travelers and tourists move by air, land and water. As too many of us know all too well, the most frustrating travel experiences often occur when connections have to be made requiring transfers from one mode to another, e.g. when the traveler arriving at the air or sea port must transfer to a bus or car or train.

As a result, the travel and tourism industry is most gratified that the first word in ISTEA is "intermodal." We are pleased that a Director for the Office of Intermodalism at the Department of Transportation has been designated, and that the Department has begun its own internal examination of what it will require to develop efficient and effective intermodal systems, that will improve intermodal connections, broaden intermodal choices and maximize intermodal coordination and cooperation. We look forward to the recommendations of the National Commission on Intermodal

Transportation established by ISTEA, and pledge to work with Congress and the DOT to implement them.

Surface Transportation Planning

As noted earlier, ISTEA directs the states, for the first time, to consider the needs of "recreational travel and tourism" in developing their statewide transportation plan.

The same requirement is not, however, directed to metropolitan area transportation plans developed by MPOs. Otherwise, the requirements for state and metropolitan plans are very similar. We do not see a reason for this discrepancy, and we believe there is ample reason for metropolitan area transportation plans to give the same consideration to the needs of travel and tourism as the states are required to do. Recently, in Miami, Florida, we have seen international visitors tragically assaulted while traveling on unfamiliar city streets. While this is obviously an extreme example, it does dramatically illustrate that for travelers and tourists from out of the country or just out of town, metropolitan areas would be well advised to consider carefully their unique transportation needs. Accordingly, we strongly urge the Subcommittee to amend ISTEA so that metropolitan areas, as well as states, must give explicit consideration in their transportation plans to the needs of tourism.

Summary and Conclusions

ISTEA is a landmark for the nation's travel and tourism industry. It represents unprecedented recognition of the interconnection between the giant travel and tourism industry and the surface transportation system. It links surface transportation to economic development, not only through the transportation system per se, but also through the enhancement and support of travel and tourism. It has contributed to a positive reshaping in many states of the relationships between state travel offices and transportation agencies, although there remains much room for improvement.

We have made several policy recommendations to enhance ISTEA's potential impact on the economic benefits generated by the travel and tourism industry, including:

- correcting the "minimum allocation" problem for the scenic byways program;
- maintaining current law and policy on outdoor advertising with regard to scenic byways;
- authorizing expenditure of transportation funds for construction and renovation of travel information centers;

- utilizing the forthcoming DOT TODS study to achieve greater effectiveness and equity in the use of TODS and logos signage;
- emphasizing the critical importance of intermodalism and giving priority to the work of the National Commission on Intermodal Transportation;
- including consideration of the needs of recreational travel and tourism as a metropolitan area transportation planning requirement.

The Travel and Tourism Government Affairs Council looks forward to continuing to work with this Subcommittee in the further implementation of ISTEА.

Survey of State Travel Directors

1. How familiar is your state travel office with the tourism-related program funding provisions of ISTEA?

☐ Very familiar ☐ Somewhat familiar ☐ Not very familiar

2. Has your state travel office held discussions with your state transportation department regarding tourism-related programs that might be initiated with ISTEA funds?

☐ Yes ☐ No ☐ Don't know

If Yes

3. How would you characterize your state transportation department's reaction to the tourism-related program opportunities provided by ISTEA?

- ☐ Transportation officials are **very interested** in pursuing ISTEA funding opportunities to benefit state tourism.
- ☐ Transportation officials are **somewhat interested** in pursuing ISTEA funding opportunities to benefit state tourism.
- ☐ Transportation officials are **not at all interested** in pursuing ISTEA funding opportunities to benefit state tourism.
- ☐ Don't know

If No

4. How would you characterize the reaction you expect from your state transportation department when you meet to discuss tourism-related program opportunities provided by ISTEA?

- ☐ We expect transportation officials to be **very interested** in pursuing ISTEA funding opportunities to benefit state tourism.
- ☐ We expect transportation officials to be **somewhat interested** in pursuing ISTEA funding opportunities to benefit state tourism.
- ☐ We expect transportation officials to be **not at all interested** in pursuing tourism-related ISTEA funding opportunities to benefit state tourism.
- ☐ Don't know

5. Over the next three years do you expect your state to pursue ISTEA funding opportunities to:

- ☐ acquire scenic easements, scenic sites or historic sites to enhance tourism in your state.
- ☐ develop scenic or historic highway programs.
- ☐ implement landscaping and other scenic beautification programs along state roads.
- ☐ preserve, rehabilitate or operate historic transportation buildings, structures or facilities.
- ☐ preserve abandoned railway corridors and/or convert rail corridors for pedestrian use or bicycle trails.
- ☐ conduct archaeological planning and research.
- ☐ conduct state program planning design and development of scenic byways.
- ☐ make highway safety improvements along scenic routes.
- ☐ construct pedestrian and/or bicycle facilities, rest areas, turnouts, shoulder improvements, passing lanes, overlooks and/or interpretive facilities along scenic routes.
- ☐ improve access for recreation purposes along scenic routes.
- ☐ protect historical and/or cultural resources along scenic routes.
- ☐ develop and/or provide tourism information along scenic routes.
- ☐ develop other projects and/or programs that might qualify for ISTEA funding including:

6. Please provide any views on the tourism-related provisions of ISTEA that you would like passed on to the Congress.

Travel and Tourism Government Affairs Council, an Affiliate of the Travel Industry Association of America

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 National Caves Association
 National Council of Area and Regional Tourism
 Organizations
 National Council of State Travel Directors
 National Council of Travel Attractions
 National Council of Urban Tourism
 Organizations
 National Park Hospitality Association
 National Restaurant Association
 National Tour Association
 Passenger Vessel Association
 Recreation Vehicle Industry Association
 Society of American Travel Writers
 Society of Travel Agents in Government
 Travel Industry Association
 United States Tour Operators Association
 U.S. Travel Data Center

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 Allen Eberly, Universal Studios Florida
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 Gregory Fisher, Allied Tours
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 Visitors Bureau
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 William S. Norman, Amtrak
 Joe Shapiro, The Walt Disney Company
 Preston Robert Tisch, Loews Corporation

U. S. House of Representatives
 Committee on Public Works and Transportation
 Subcommittee on Surface Transportation
 Oversight Hearings
 on
 Implementation of the
 Intermodal Surface Transportation
 Efficiency Act of 1991 (ISTEA)
 including
 The National Recreational Trails Fund Act

April 28, 1993

Testimony of Wayne Reece, Esq.
 Atlanta, Georgia

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to address this committee in support of the National Recreational Trails Fund Act and Project Opportunity, an enterprise with potential to build our country's trails infrastructure while it molds the character of our youth.

My name is Wayne Reece. I am an attorney from Atlanta, Georgia. It has been my privilege to coordinate the development of the exciting project which we will tell you about today. I've done that on behalf of my client, the Motorcycle Industry Council, but also because I am personally very enthusiastic about this project.

Project Opportunity

Project Opportunity is an innovative program that will leverage the resources of the National Recreational Trails Fund Act, the Job Training Partnership Act, and private in-kind donations to provide summer employment and self-development opportunities for our under-advantaged youth.

I know that we are here today to talk about ISTEA, and I know that the National Recreational Trails Fund Act is just a very small part of ISTEA. We firmly believe, however, that Project Opportunity has the potential to make this committee very proud of the Trails Act. Project Opportunity is an ISTEA success story in the making.

Project Opportunity is a direct outgrowth of your enactment of the National Recreational Trails Fund Act as Part of ISTEA. We would not be enhancing either our trails infrastructures or our young people, if the subcommittee had not the foresight and good judgment to take the revenue from the off-road vehicle gasoline tax and put it in a special fund for recreational trails. This approach is completely consistent with the user-pay, user-benefit concept that has always been at the heart of Highway Trust Fund -- a concept that has resulted in America's having the greatest transportation infrastructure in the world. Now, with your help, the resources can be made available to build, repair, and maintain a recreational trail infrastructure second to none, as well as providing jobs for teens who need them most.

Here's how the project will work in Georgia this summer. Young people ages 16 to 22, who would otherwise be idle and bored, will be hired to work on building, repairing, and maintaining recreational trails throughout North Georgia mountains and in Atlanta. The U.S. Forest Service and the Georgia Department of Natural Resources will act as general managers by giving specific advice on trail infrastructure. These two agencies demonstrate

their enthusiastic support of this program by donating time, personnel and technical expertise.

The Georgia 4-H Program, a premiere youth organization for more than 75 years, will act as on-site managers of the entire project and provide supervision for the youth teams. Salaries will be paid using funds from the federal Job Training Partnership Act.

Expenses directly related to trail maintenance or construction will be paid using funds from the National Recreational Trails Fund Act, that small but very significant part of ISTEA we mentioned earlier.

We are also developing plans for an urban component of Project Opportunity. That part of the project will provide jobs for inner-city Atlanta youth working on urban recreational trails and will operate as a year-round program.

Project Opportunity will provide these young people with extensive instruction in proper trail construction techniques and an innovative academic enrichment developed by some of the brightest minds in private industry and the educational community. The Project Opportunity experience will be perhaps the most intensive period of independent decision-making that any of these young people has ever known.

Some of these young people have had a limited chance to encounter many of the experiences that we sometimes take for granted. They need and deserve to be exposed to events that will enable them to have a full and productive life.

The development of this concept parallels a re-emerging

national commitment to service and change. The creation of jobs in rural communities meets a short-term as well as a long-term need. For this group of participants, the summer of '93 will be the beginning of a challenging journey.

These young people will be able to contribute to the well being of their families, while at the same time developing the skills for a meaningful future. There will be a sense of pride in knowing that they have served not only themselves but their whole community. Young people throughout America are asking for a chance to contribute. Project Opportunity opens up an avenue to provide National Service right here at home.

The Partnership

Project Opportunity is a splendid example of public-private partnership at work. It involves business and industry, the 4-H organization, community leaders, colleges, environmental organizations, and state and federal government agencies. Partners in the project include:

- o The Georgia 4-H Program
- o U.S. Forest Service
- o The U.S. Park Service
- o Georgia Department of Natural Resources
- o American Honda Motor Co., Inc.
- o Motorcycle Industry Council
- o Sautee-Nacoochee Community Center
- o Young Harris College

- o C & S Paving Co.
- o The Georgia Conservancy
- o Georgia Mountains Private Industry Council
- o North Georgia Private Industry Council
- o Georgia Wilderness Federation
- o Friends of the Mountain

The Hearing Participants

Several of the partners have sent representatives to tell you about their role in and their enthusiasm for Project Opportunity today. They are:

- o Mr. Tom Rodgers, Assistant Director, University of Georgia Community Extension Service County Relations.
- o Ms. Nell Jones, Trustee, Georgia Conservancy and Georgia Wildlife Federation, Past President of Friends of the Mountain.
- o Mr. Harvey Clanton, Director of Human Services, Georgia Mountain Private Industry Council.
- o Ms. Carolyn Stradley, President, C & S Paving, Inc.

Well, that's Project Opportunity. I hope you can see that we are all very excited about it.

A National Model

This summer, Project Opportunity is operating only in Georgia. That's where we're developing the model. . Because of the leadership and involvement of the Georgia 4-H Program, the effort can be

readily duplicated by other state 4-H organizations. Next summer, we intend to take the program nationwide, if the funding is available. In fact, the States of Michigan, Texas, North Carolina, Pennsylvania, California, and Illinois have already indicated an interest in Project Opportunity.

The Request

We ask this subcommittee to recognize the significant potential of the National Recreational Trails Fund Act and the Job Training Partnership Act as resources for enabling the kind of cooperative effort for trail building and youth employment which Project Opportunity represents.

The National Recreational Trails Fund Act received no funding in its first year, and during the current fiscal year it is funded at a level of only \$7.5 million, despite authorization by this Subcommittee at a level of \$30 million.

\$7.5 million in Trails Act funds does not go very far when divided among 50 states. Georgia's share of the pot was only \$180,000. The need for trails infrastructure improvements greatly exceeds the resource currently being made available. We could do much more with Project Opportunity if more resources were made available.

It would be especially helpful if the Trail Act were given contract spending authority, like that of highway program expenditures from the Highway Trust Fund. That would assure the availability of the full \$30 million authorized by this

Subcommittee.

With your help, and with the help of many other interested organizations and individuals, we can make Project Opportunity happen. We can make two federal funding programs work together so that the benefits of both are augmented. We can improve the nation's trails infrastructure, benefiting all kinds of trail users. We can enhance environmental quality through proper construction and maintenance of trails. We can provide jobs, good jobs with significant learning components, for America's youth.

Conclusion

Project Opportunity is much more than a summer job. It's the enhancement of the individuals who will be improving Georgia's trail infrastructure. This will be accomplished by the implementation of a unique design that fosters individualized growth, attainable goals and expectations, and the tools to succeed in the twenty-first century.

Wayne Reece, Esq.
Attorney-at-Law
1100 Spring Street, N.W.
Suite 350
Atlanta, Georgia 30309
(404) 888-0905

**National Recreational Trails Funding Program
State-by-State Allocations for FY 1993**

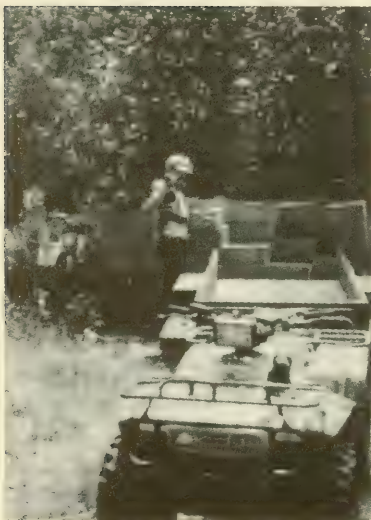
Alphabetical

155,115	Alabama	129,036	Montana
110,078	Alaska	98,245	Nebraska
100,632	Arizona	83,224	Nevada
138,095	Arkansas	121,853	New Hampshire
292,923	California	123,716	New Jersey
122,022	Colorado	85,233	New Mexico
96,819	Connecticut	226,136	New York
76,616	Delaware	173,174	North Carolina
69,952	District of Columbia	89,851	North Dakota
199,272	Florida	156,268	Ohio
180,915	Georgia	111,940	Oklahoma
69,952	Hawaii	109,080	Oregon
100,504	Idaho	231,837	Pennsylvania
155,358	Illinois	69,952	Puerto Rico
126,882	Indiana	76,351	Rhode Island
128,522	Iowa	108,080	South Carolina
97,705	Kansas	88,655	South Dakota
128,024	Kentucky	171,186	Tennessee
130,478	Louisiana	228,294	Texas
154,437	Maine	108,352	Utah
106,135	Maryland	117,108	Vermont
123,250	Massachusetts	148,674	Virginia
398,564	Michigan	125,149	Washington
319,697	Minnesota	114,707	West Virginia
123,562	Mississippi	237,503	Wisconsin
144,596	Missouri	91,291	Wyoming

NEW HAMPSHIRE'S SECOND START PROGRAM

Trail blazing & solving problems!

By Jeff Harstedt



Base of operations for the workers and staff was the Sugar Hill Speedway in Weare, NH. The Merrimack Valley Trail Riders (MVTR) was one of the program's sponsors.

« All it takes is just a little determination and a lot of muscle. With the help of generous sponsors, New Hampshire's Second Start Program gave 12 ambitious youths needed jobs for the summer and the state's off-road trail system a major facelift. Cement blocks were used to stabilize uphill.

Problem #1: New Hampshire's over-used off-highway trail system, in need of maintenance.

Problem #2: Underprivileged and bored kids, unable to find jobs, and at risk of becoming high school dropouts.

Solution: Second Start, a non-profit agency for the underprivileged.

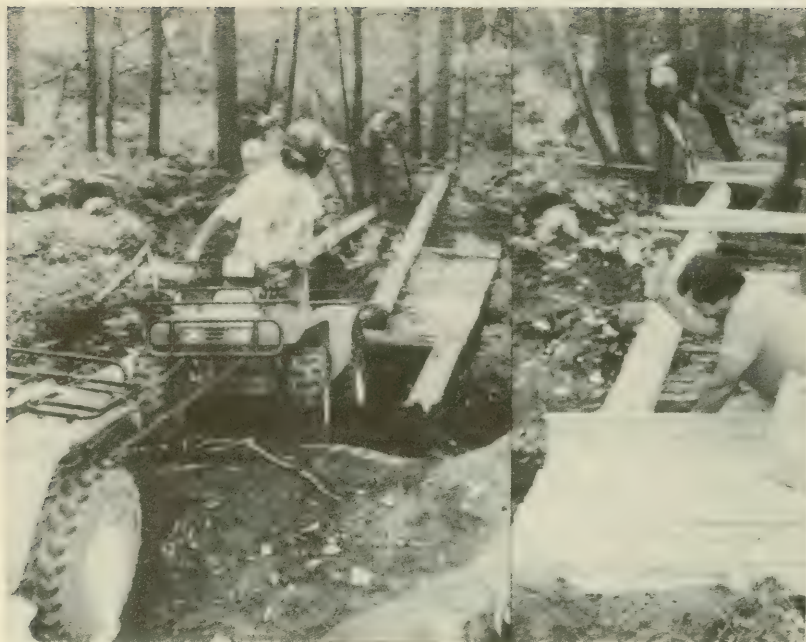
Is it possible that two problems could be solved so simply? New Hampshire's Second Start Youth Employment Program provided summer jobs (and skills) for needy students and gave the state's

trail system a major face lift in the process. Using ATVs (provided by the state) to transport tons of concrete blocks, lumber and gravel, 12 students did extensive work along the 30-mile OHRV (off-highway recreational vehicle) trail system in the Hopkinton-Everett Flood Control Area. Armed with hoes, shovels, steel bars, rakes, pruners, saws and hammers, they worked the trails and found that ATVs can be fun, useful tools. Also, they made some cash in the deal! Not a bad way to

spend a summer vacation.

The trail blazing work program, spearheaded by Denis Laliberte of Second Start, demanded of the students both brain and brawn. The students used math and problem-solving skills to design bridges, to implement block-emplacement projects, purchase tools and materials and manage their hard-earned money. Writing and communication skills were emphasized as the students kept a daily journal of their activities.





SECOND START

PRIDE & SWEAT

However, the bulk of the students' time was spent in the woods. Each day for seven weeks, three crews of four students and a teacher/supervisor headed out from their "classroom" and base of operations—a large garage at the Sugar Hill Speedway—and hit the trails where they contended with sweltering heat and swarming insects as their work skills, pride and callouses grew.

The work consisted of doing maintenance on an existing trail system located in southern New Hampshire on federal land, managed by the state and Army Corps of Engineers. "Due to the limited availability of legal off-road riding areas in the region, this trail system receives a tremendous amount of use," said Laliberte. Therefore, there is a great need for trail maintenance. As a result of our program, this area received 2615 hours of intensive manual labor. It was a learning experience for everyone,

staff included."

Projects included erosion control in the form of specially designed rubber water bars, stabilizing uphill with cement blocks and chain link fence, rebuilding historic rock walls, filling in ditches, pulling stumps, drawing and designing a map, building and installing signs, mixing cement, doing an environmental impact study, building bridges, moving rock, making trails, cutting back brush, grading trails and, in general, sweating a lot.

In addition to working on these projects, everyone received training in other related areas including a full-day Specialty Vehicle Institute of America (SVIA) training course, a seven-hour New Hampshire Fish and Game OHV Safety Course, eight hours of basic first aid training and a job-seeking workshop.

For the dozen Concord youths, it was actually the ultimate summer job. Added Laliberte, "Summer jobs are practically non-existent here in New Hampshire, especially for a teen with little or no previous work experience, and with

How do you build a strong bridge faster and cheaper than a professional contractor . . . in only three days? First cut down two 50' Norway pines (to be used as "stringers"), then drag them to the site using two ATVs in tandem. Next, remove the bark, install footings and level the stringers. Finally, install the decking, kick rails and you are ready to dedicate your bridge and open it to traffic. This is only ONE of three new bridges designed (and 20 repaired) by Second Start. The work was tough but satisfying, and the kids were grateful to be employed when many of their peers were jobless and broke.

handicaps or other barriers to employment. Though this job paid the minimum wage [\$4.25 an hour], it required only a willingness and determination to better oneself, make a commitment and follow through.

"Everybody's happy," concluded Laliberte. "Off-roaders and other recreationalists get the benefit of improved trails and a dozen at-risk kids put their energies to productive use for the summer."

For more information on Second Start call (603) 225-3318.



FUNDING TURNING ON THE CASH FLOW

• Funding for the project was gathered from a number of sources, with the Second Start organization managing the program and acting as the fiscal agent. The major contributor to the program was the New Hampshire Job Training Council, which supplied \$25,000 from federal funds. The N.H. Bureau of Off-Highway Vehicles (BOHV) supplied \$18,000 from off-road registration funds, and the Motorcycle Industry Council came up with \$1300 to purchase tools. The Merrimack Valley Trail Riders gave the program a \$360 "slush fund" to be used to keep the kids motivated. The sum of \$250 was donated by the Granite State Wheelmen, Inc., a 1400-member mountain bike club that uses the trails which were improved. This money was used to provide a bonus to all kids who completed

the job without missing a day or being late to work.

We asked Denis Laliberte how difficult it would be for another state to procure funding for a similar program and he quickly responded: "I was surprised how quickly things fell into place. The organization that really got the program off the ground for us was the Motorcycle Industry Council. Their support gave the program credibility and opened the door to other funding."

"If your state has an OHV registration fund, find out where that money goes! All states have a Private Industry Council which receives million-dollar federal grants to run job training programs and summer youth programs. If you have a worthwhile program, they have the dollars. On the local level are ATV dealers, who might be willing to supply vehicles. Also try calling off road clubs, which might supply work boots, helmets and small hand tools. Get your motor going and put an idea to work for you and your community. We, the off-rovers,

need to promote ourselves as the legitimate and environmentally responsible user group that we are!" •

"HOW WAS YOUR SUMMER?" NOTABLE QUOTES FROM THE SECOND START KIDS

• "It makes sense that some of the tax dollars should be spent on us! After all, we'll be tomorrow's leaders!"

"This job gave me the opportunity to get out and feel the great outdoors. Also, it gave me some money to get through the week."

"The worst part was getting up in the morning and dealing with the bugs and heat, but I learned landscaping, met nice people and having fun."

"It beat being bored all day, and I built up my body."

"The job was hard work, but the crew leaders made it a lot of fun. I wish this job had never ended!" □

STATEMENT OF REPRESENTATIVE BILL RICHARDSON
IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION
EFFICIENCY ACT OF 1991

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

April 28, 1993

Chairman Rahall and Members of the Subcommittee on Surface Transportation - good morning. As Chairman of the Committee on Natural Resources' Subcommittee on Native American Affairs, I am honored to have this opportunity to come before you today to discuss the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and how it relates to Indian reservation roads.

I would like to begin by thanking this Committee for its efforts on behalf of Indian tribes during the drafting of ISTEA. Your willingness to listen to the problems of Indian tribes in dealing with inadequate infrastructure and your dedication in securing increased funding for Indian reservation roads has brought us to this day. I'd also like to commend the Subcommittee for including a Native American panel at your hearing today.

The Mille Lacs Band of Chippewa Indians is a tribe in Minnesota which has established a successful gaming enterprise and uses the proceeds to build and renovate much of their reservation. As you are well aware any growth puts a strain on roads and bridges. This extraordinary growth puts them in an ideal situation to explain their experience with ISTEA implementation and I am sure the Chief Executive of the Mille Lacs Band, Marge Anderson, will do just that.

The Hoopa Valley Tribe of California is attempting to take full advantage of ISTEA to directly manage tribal road planning and construction. The tribe is moving towards gaining the expertise to run their roads program in-house. This was exactly the intent of the Indian provisions in ISTEA and it is imperative that tribes be assisted and encouraged in this direction.

I am sure that the testimony you hear today from the Oglala Sioux of South Dakota and the Navajo Nation will give you a perspective from large tribes in desolate areas. The National Congress of American Indians and the Affiliated Tribes of Northwest Indians should round out the Indian testimony with overall tribal reaction to ISTEA.

While this panel will give you the details and specifics - I would like to touch on just a couple of issues.

ISTEA mandates that state governments include Indian tribes during road planning. I ask that when states which have Indian tribes within their boarders come before you - you ask them about their meetings with tribes. If states are not meeting with tribes during the planning process, then ISTEA is not working.

Tribes are not "political subdivisions" of states - they are sovereign governments and any provisions within ISTEA which describe Indian tribes as political subdivisions of states should be amended.

I am concerned with the way in which the Bureau of Indian Affairs (BIA) has implemented the planning set-aside within ISTEA. I have directed my staff to examine the program and report to me

with recommendations for improving it so that the original intent of the provision to allow tribes to complete road planning can occur with minimal bureaucratic obstacles.

I am sure that you will hear of the problems tribes have dealing with the BIA. While I know full well that jurisdiction over BIA lies with my Subcommittee and the Natural Resources Committee, I do believe that greater assistance to Indian tribes from the Federal Highway Administration would be most valuable. There are close to 500 federally recognized Indian tribes and Alaska Native Villages in this country and yet the Federal Highway Administration has, as best I can tell, only a couple of employees charged with working on Indian reservation road issues. There has to be better communication between BIA and the Federal Highway Administration and that relationship MUST include tribes directly.

Since the 1970's Congress has backed away from the previously failed paternalistic Federal Indian policies and instead has embraced an era of Indian self-determination. This new direction allows and encourages tribes to decide their own future and plot their own course. This must be done while all the time accepting and acting in accordance with the Federal trust responsibility.

Tribes of today don't need the Federal government to tell them how to govern and care for their people, what language they should speak in their homes, or what road should be built where. What tribes do need is technical assistance, respect, access to experts, and less bureaucracy so that they can become self-sufficient. True self-determination means making decisions affecting the internal

matters of the tribe, determining the destiny of the tribe and dealing with states as co-equal sovereigns.

Although, there are no Federally recognized tribes in West Virginia, Nick you have been a long-time friend to Indians as a Member of the Natural Resources Committee. I look forward to working with you to improve the lives of Indians in your new capacity as Chairman of this Subcommittee.

Thank you.

U. S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Oversight Hearings
on
Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)
including
The National Recreational Trails Fund Act

April 28, 1993

Testimony of
Dr. Tom Rodgers, Assistant Director,
University of Georgia
Cooperative Extensive Service, County Relations

Chairman Rahall, Members of the Surface Transportation Subcommittee, Ladies and Gentlemen, my name is Dr. Tom Rodgers, and I am the Assistant Director for the University of Georgia Cooperative Extension Service, County Relations, and former Director of the Georgia 4-H Program. I greatly appreciate the opportunity to appear before this subcommittee.

I am here before you today to express my enthusiasm and support for the National Recreational Trails Fund Act, and specifically a program which we in Georgia 4-H are very excited about -- Project Opportunity.

Project Opportunity is a dynamic program designed to build and maintain America's recreational trails infrastructure and the character and discipline of our young people. 4-H is pleased to be an integral part of this innovative pilot program.

Through all my years of work in 4-H, I am here to tell you that the National Recreational Trails Fund Act has given us the

money and the criteria to develop one of the most creative and innovative educational and job training programs I have ever seen.

Background

The 4-H Program is the youth component of the Cooperative Extension Service. It maintains academic ties to the land-grant universities in each of the fifty states. All have programs which focus on public service. The Georgia 4-H Foundation has been a model for the national 4-H program and is consistently examined by other states because of its innovative programs.

We've been helping young people become happy, productive adults since the first decade of this century. Countless testimonies from nationally known politicians, attorneys, bankers, entrepreneurs, actors, and a host of other professions attest to 80 years of a sound 4-H program that uses real-life situations to hone skills and develop life long values. Values like accomplishment, perseverance, patriotism, conservation, and democracy. These values are the core of the 4-H philosophy and the backbone of our nation.

The Georgia 4-H program is one of the largest and most active 4-H organizations in the country. Last year, in two major outdoor programs alone, we served almost 40,000 young people from Georgia and six other states. Our members completed more than 365,000 projects designed to cultivate practical skills like decision-making, responsibility, team-building, and self-reliance.

We don't have to look far to find an example of the success of the 4-H program. Wayne Reece, who just spoke to you, grew up in the Georgia mountains as an active 4-H'er.

Project Opportunity

Project Opportunity is a terrific program which will allow us to continue our long standing tradition of investing for tomorrow's future. We have enthusiastically seized upon it as an appropriate vehicle for carrying out the important goals of 4-H.

The major focus of the program is work on trails. Through trail building and maintenance, participants come together with their peers and rebuild the decaying and otherwise nonexistent infrastructure of America's trails. This will allow our youth a "hands on" experience -- digging out footpaths and clearing brush in order to make a difference through national service.

We anticipate that Project Opportunity will provide many hours of labor on trail resources, resulting in repair and maintenance of more than three hundred miles of trails.

Our program is patterned after a similar but smaller program which has been operated by an organization called Second Start near Concord, New Hampshire for the past two summers. As part of that program, several trail bridges have been constructed, primarily with hand tools. Imagine the pride and sense of accomplishment for the small team of young people who designed and built a bridge as part of their summer job. That's the kind of potential we see in Project Opportunity.

Educational Component

Georgia 4-H participants are blessed with a carefully selected and extensively trained staff of counselors and educators.

Only those who have excelled in the 4-H program and are highly motivated earn the opportunity to become 4-H counselors.

Project Opportunity staff will be selected from a pool of our environmental educators, college interns, and former Georgia 4-H counselors -- a staff intimately acquainted with young people.

The staff members will be thoroughly trained in a number of areas including:

- o Trail Construction
- o Ropes Courses
- o Red Cross First Aid
- o Lifesaving Techniques
- o AIDs awareness
- o Emergency procedures

Among the programs that will be incorporated in our educational component are Project WILD in Georgia, an award winning environmental education program designed for teachers, educators and students of all ages.

Academic enrichment will be a vital component of Project Opportunity. One of the five days in each work-week will be devoted to innovative approaches to traditional educational studies.

The overall educational philosophy of Project Opportunity will be interdisciplinary in nature. All subjects and experiences will be designed to feed off and flow into each other. Through this approach our kids will learn by doing -- whether they're reading simple instructions or computing the amount of materials needed to build a bridge.

Important life skills will be taught throughout the program -- basic reading and writing skills, how to complete a job application, how to dress for an interview, and the importance of arriving at work on time. These skills are important, but no education will benefit our youth more than good, old fashioned, hard work.

Five days a week, eight hours a day, under the supervision of carefully selected team leaders, groups of 4-5 students will pick up their shovels, pruners and mattocks and go to work on the trails. They will spend their summer days:

- o Digging footpaths
- o Clearing brush
- o Landscaping
- o Building bridges
- o Putting in water bars

National Opportunities

National interest in Project Opportunity is growing. Many state organizations have expressed interest in replicating the program in their own states -- among them are California, Illinois, Michigan, North Carolina, Texas, and Pennsylvania.

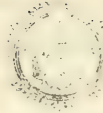
Georgia will be the prototype for a program that will build and maintain trails nationwide. Young people throughout the country can benefit from the skills that can be learned by building a trail or a bridge. Lessons that are learned in the outdoors can't be learned anywhere else.

The Georgia 4-H Program is conscientiously recruiting staff from sister organizations nationwide to fill positions within Project Opportunity. The philosophy is to bring key people here to our program to work as counselors and staff.

As a key part of the Project Opportunity team, staff from other states will become equipped with the "nuts and bolts" of our operation and take that knowledge back to their home states. Once there, the Project Opportunity experience can be implemented in each state, expanding to a national scale in 1994 and beyond. We believe that Project Opportunity can become a reality throughout the nation. That's our commitment to the project.

We hope that Congress will also commit to Project Opportunity by providing full and adequate funding for both the Job Training Partnership Act and the National Recreational Trails Fund Act.

Dr. Tom Rodgers, Assistant Director
Cooperative Extension Service-County Relations
University of Georgia
Athens, Georgia 30360
(706) 542-5408



NAVAJO NATION WASHINGTON OFFICE

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

PRESENTED BY FAITH ROESSEL

DIRECTOR, NAVAJO NATION

WASHINGTON OFFICE

FAITH E. ROESSEL, ESQ.
EXECUTIVE DIRECTOR

1101 17TH STREET, N.W., SUITE 250
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-0283
FACSIMILE (202) 775-8075

TESTIMONY OF THE NAVAJO NATION

Before the

HOUSE SUBCOMMITTEE ON SURFACE

TRANSPORTATION

On

IMPLEMENTATION OF THE INTERMODEL

SURFACE TRANSPORTATION EFFICIENCY ACT

April 28, 1993

10:00 a.m.

2167 Rayburn Building

(Revised April 27, 1993)

**TESTIMONY OF THE NAVAJO NATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
ON
IMPLEMENTATION OF THE
INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT
APRIL 28, 1993**

Mr. Chairman, Members of the Surface Transportation Subcommittee, on behalf of President Peterson Zah and the Navajo Nation, I thank you for the opportunity to testify on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, commonly known as ISTEA.

The Navajo Nation was very involved in pushing for ISTEA's enactment two years ago. We are honored to be asked to give you our recommendations on how the law has been carried out thus far.

Transportation is an important service program that provides the infrastructure upon which American Indian tribes' initiatives can be achieved. The economic growth of any nation has always depended upon an adequate road and transportation system to serve its economic and community development plans. ISTEA provides that opportunity.

INTRODUCTION

The Navajo Nation's testimony today will address the positive aspects of ISTEA and provide the Subcommittee with examples of how our nation has implemented successful projects which have improved road and safety conditions on the reservation and how ISTEA has provided employment for Navajo people and helped increase the potential for further economic development. In addition to the benefits of ISTEA, I will also comment on some of the problems in implementing the Act which include, the funding formula imposed upon the Navajo Nation by the Bureau of Indian Affairs (BIA), the diminished role of American Indian tribes in the decision-making process and the difficulty in working with the BIA in negotiating transportation planning and P.L. 93-638 contracts. Finally, the Navajo Nation will provide recommendations on ways to improve ISTEA to better serve the Navajo Nation and other American Indian tribes.

NAVAJO NATION

The Navajo Nation is the largest American Indian tribe in

state of West Virginia. Given the scope of this hearing, a more appropriate comparison is that West Virginia has about 18,000 miles of paved roads. By contrast, the Navajo Nation has only 2,000 miles of paved roads!

With such a large land area and so few paved roads, the need for improving the infrastructure on the Navajo reservation is crucial for the health, safety and quality of life for our people. Under present conditions, it is difficult for Navajos to travel long distances on rugged dirt roads to hospitals in order to receive medical care. Many of our schoolchildren have no choice but to be absent from school on days when heavy snows or rains make travel on dirt roads virtually impossible. Almost every year harsh weather creates an emergency situation where the National Guard is called upon to deliver basic necessities such as food, water and wood to more remote areas of the reservation. In fact, this past winter the National Guard was called in and used helicopters and 6 X 6 all-terrain vehicles because the roads were impassible, even for vehicles equipped with four-wheel drive. Although these conditions still illustrate our way of life, implementing ISTEA will be the first step toward overcoming our enormous transportation deficiencies.

BENEFITS OF ISTEA TO THE NAVAJO NATION AND INDIAN TRIBES

Increased Road Funding to Indian Tribes:

By enacting ISTEA, the federal government has authorized substantial funding to the Navajo Nation and other American Indian tribes. The Indian Reservation Roads (IRR) Program received an increase of funding from \$80 million per year in FY 1991 to \$159 million in FY 1992. Additionally, IRR will receive \$191 million per year beginning in FY 1993 until FY 1997. As a result of this increase in funding, the Navajo Nation's allocation rose substantially from \$18 million in FY 1991 to \$37 million in FY 1992. This increase has helped accelerate the Navajo Nation's road improvement program and has provided employment for many Navajos.

Completed Projects for FY 1992:

With the increase in funding for FY 1992, the Navajo Nation was able to complete several major transportation projects and improve important parts of our transportation infrastructure.

For example, approximately 85 miles of road construction was completed in various portions of the reservation. These 85 miles have made trips to hospitals, schools, and stores safer and more efficient for reservation residents. Areas previously inaccessible became connected to the broader Navajo community.

Using our FY 1992 IRR funds, the Navajo Nation constructed a bridge at the base of the Lukachukai mountains. Only one dirt road connected Navajo residents south of Lukachukai to residents north of the mountain. In the summer months, when rains washed out the road, Navajos living on the mountain had no means to cross the wide wash to buy food and necessities. Now, rather than go all the way around the mountain, Navajos can cross the new bridge and travel over the mountain in one third less time. Although the bridge has opened up travel and access, the dirt road will need to be paved.

Finally, the Navajo Nation seal coated approximately 60 miles of various stretches of highways on the reservation using \$3.1 million in FY 1992 for this project. This seal coating will ensure a longer life for our paved highway network which is vital to maintain and preserve our transportation infrastructure.

Planned Projects for FY 1993:

In FY 1993, the Navajo Area will receive \$43,879,000 in ISTEAF funding. This money will provide the Navajo Nation the means to continue improving our transportation infrastructure. For example, the FY 1993 priority listing will improve and surface approximately 120 miles of roads within the boundaries of the Navajo Nation. Some specific examples of these projects are as follows: 1) grade, drain and surface 1.5 miles of road between Aneth and Ismay, Utah to increase safety and shorten travel time to Aneth Health Clinic; 2) pave 4.5 miles of dirt road from Lukachukai to Buffalo Pass allowing local residents and school children safer passage over steep mountain roads and quicker travel to Chinle Hospital; 3) grade and drain 5.3 miles of road from Buffalo Pass to Red Valley thereby shortening travel in-half and improving access between the Northern Fort Defiance High Plateau to Shiprock; 4) widen 11.9 miles from Fort Defiance, Arizona to Navajo, New Mexico, a narrow and heavily traveled road, averaging 10,000 vehicles per day, including school buses; 5) pave 3.4 miles of road between I-40 at Thoreau, New Mexico to Farmington, New Mexico, another heavily traveled road.

In addition to these projects, other major tasks planned for FY 1993 include completing preliminary archeological, ethnographic and environmental studies and seal coating approximately 65 miles of highways throughout the reservation.

Employment:

Besides improving our infrastructure, ISTEAF also provides much needed full-time employment. The Navajo Area BIA provides the bulk of employment through its Branch of Roads Program. ISTEAF is extremely successful when coupled with "638 contracts". Pursuant to P.L. 93-638 Indian tribes can assume the federal

functions and programs the BIA provides. Under ISTEA various programs are delegated to the BIA. The Navajo Nation, using P.L. 93-638, contracted for portions of the Navajo BIA Area Roads Program. The Navajo Department of Transportation contracted for transportation planning which employs 15 full-time Navajos as engineers and planners. The Navajo Division of Natural Resources contracted the Archeological and Right-of-Way Programs from the Navajo BIA Area Branch of Roads. The Archeological Program employed 19 individuals in FY 1992 and completed approximately \$1 million worth of work. Under Title II of ISTEA, Highway Safety, the Navajo Nation contracted for the Highway Safety Program. This program employs Navajos and provides traffic safety services. Under Title III and IV of ISTEA, the Navajo Nation established the Navajo Transit Authority to provide low-cost transportation on the reservation.

In addition, the Navajo Engineering and Construction Authority (NECA), an enterprise of the Navajo Nation, bids for construction contracts using P.L. 93-638 and received over \$13 million in construction funds for FY 1992. NECA employs local people and has provided jobs for many Navajos.

Planning:

Pursuant to 23 USC section 204 of ISTEA, two percent of each year's IRR funds are allocated to tribal governments to develop a transportation improvement program. The Navajo Nation has taken advantage of this mandate, receiving \$659,000 in FY 1992 to conduct transportation planning. This allowed the Navajo Nation to have direct input in prioritizing its transportation needs until FY 1999. As stated previously, (Planned Projects for FY 1993) the Navajo Nation has many priorities for road construction. Through our transportation planning grant, we now have a comprehensive list documenting our needs until FY 1999.

Post Secondary Institutions:

ISTEA authorizes Highway Trust Funds to be used to construct road projects on roads of tribally controlled post secondary schools. In FY 1992, the Navajo Nation upgraded the streets surrounding the Crownpoint Institute of Technology by constructing sidewalks and improving the safety of the streets.

The Navajo Nation also plans to improve access to the Navajo Community College campus in Tsaille, Arizona in FY 1994 by paving the eastern exit of the campus and upgrading the present entrance on the west side of campus.

PROBLEMS IN IMPLEMENTING THE INTENT OF ISTEA

While the Navajo Nation sees the forgoing initiatives as positive measures, we have encountered problems and obstacles in

implementing provisions of ISTEA relevant to the Navajo Nation and American Indian tribes.

Adopt "Relative Need" Formula Immediately:

Foremost, the Navajo Nation stands to lose approximately \$13 million in its road construction program because of the BIA decision to phase-in the "Relative Need" formula spread out over four years, FY 1993 to FY 1996. In 1987, pursuant to Section 1042(a) of ISTEA, the BIA's Division of Transportation undertook a national relative need study and contracted the work to Architectural/Engineering Group, Inc., (A/E) an architectural and engineering firm from Baltimore, Maryland. The purpose of the study was to define relative needs and develop fund allocation methodologies that distribute funds for road construction fairly and equitably to the twelve BIA Area Offices. This study was conducted between January 1988 and May 1989 and the U.S. Department of Transportation and the U.S. Department of the Interior accepted and approved the Relative Need Study and agreed on the full implementation of the "Relative Need" formula in FY 1992. However, on January 19, 1993, the BIA's Division of Transportation changed full implementation to a transition period spread out over four years from FY 1993 to FY 1996. **The Navajo Nation urges immediate implementation of the "Relative Need" formula in FY 1993.** Otherwise, we stand to lose \$13 million, but moreover, Congressional intent goes ignored.

Administrative Costs:

ISTEA provides American Indian tribes the means to perform transportation planning, but it fails to authorize funds for administration costs in order to implement tribal priorities. As tribes assume more and more responsibility for their own roads programs, they must be able to establish measurable goals and perform program evaluation. **The Navajo Nation recommends that a percentage be set-aside for tribes' administrative costs in administering the IRR program.**

Bridge Replacement and Rehabilitation:

Bridge Replacement and Rehabilitation, 23 USC section 144, provides not less than one percent of the amount apportioned to each state which has an Indian reservation within its boundaries for each fiscal year for Indian bridges. Funds for this allocation are scarce and do not appear to be adequate to construct a single bridge. In New Mexico alone 19 Pueblos, two Apache tribes and the Navajo Nation must all compete for New Mexico state funds. The cost of constructing the Lukachukai bridge was \$700,000. In addition, we do not expect to receive any funds from states. States, for the most part, perceive that all roads and bridges on Indian reservations are taken care of by the IRR funds, therefore, no additional monies are received from

states. The Navajo Nation recommends Congress revisit this ISTEA provision with the intent of making it more operable.

Direct State Consultation and Low Priority of Indian Roads:

Under 23 USC section 135, a state is required to consider concerns of Indian tribal governments having jurisdiction over lands within the state and coordinate with the Secretary of the Interior. The Navajo Nation believes this is a critical part of ISTEA yet is one only recently initiated by the states of Arizona, New Mexico and Utah. Representatives from the Navajo Nation have begun serving on transportation committees of the Northwestern New Mexico Council of Government and the Northern Arizona Council of Government. In addition, the San Juan County (Utah) Commission has coordinated with the Navajo Nation on construction of the Aneth-Isamay road. While these are positive first steps, states have not recognized our sovereign status as a "government." States strongly recommend that the Navajo Nation work with their respective regional planning organizations which are comprised of representatives from the cities, towns and county commissions of the region. Based on the Navajo Nation's sovereign status, we recommend that we work directly with the state transportation office rather than regional planning organizations. An unavoidable result occurring at the planning meetings is Navajo representatives being outvoted by local non-Navajo representatives when proposing Navajo projects.

Another complication is the issue of jurisdiction. States and the BIA are prohibited from funding road construction projects if they do not have Right-of-Way clearance for that particular project. This Right-of-Way clearance consists of land-owner's consent, archaeological clearance, environmental assessment, legal survey of the area and road construction design. If the project is on Navajo land then Navajo requirements should govern that are not inconsistent with ISTEA. States should recognize our process as well.

Overall, states are not used to dealing with roads on Indian lands and perceive their primary ISTEA responsibilities are interstate highways, U.S. highways, and state roads. As a result, Indian reservation roads are not a top priority in the statewide planning process. The Navajo Nation recommends that Congress review the FHWA's responsibility to assure states are complying with section 1025(a) in statewide planning.

Failure to Implement Other Modes of Transportation:

One of the main objectives of ISTEA is to provide funding for several modes of transportation in one center to increase the efficiency of transportation. The funding for the Navajo Nation, however, does not include other forms of transportation such as railroads or industrial pipelines. Years ago, the coal industry

determined that the most cost effective means to transfer millions of tons of coal extracted from Navajo lands, is by pipeline and railroad. Mining activity within and adjacent to the Navajo Nation is ongoing and the transporting of large quantities of coal by railroad and pipeline should be included in ISTEA. **We recommend that the provisions of ISTEA be expanded from its present scope to include other forms of transportation such as railroads and industrial pipelines.**

Preclusion of Tribal Designation of Scenic Byways:

The Navajo Nation and many American Indian tribes have many significant features of scenic, natural, cultural, and archaeological importance yet, we cannot participate in the ISTEA Scenic Byways Program. The Scenic Byways Program allows states to designate scenic byways and mandates that all grants be funnelled through the state highway agency. American Indian tribes are precluded in this decision making process which contributes to the erosion of tribal sovereignty. American Indian tribes should be given the right to designate their own scenic byways and to coordinate with each state. This would enable tribes to develop their own Scenic Byways Program and ensure the development of Indian scenic and tourism related economic development. **The Navajo Nation recommends that ISTEA be amended to allow Indian tribes the right to designate their own scenic byways.**

Indian Reservation Roads Needs Assessment:

The U.S. Department of Transportation and the Department of the Interior, each represented by the Federal Highway Administration (FHWA) and BIA respectively, entered into a Memorandum of Agreement for the overall administration of the IRR Program. Pursuant to ISTEA, the BIA is responsible for administering the IRR for Indians. Currently, ISTEA has no mechanism for monitoring the BIA in carrying out this vital program. **The Navajo Nation recommends that Congress require that the BIA report to it on the progress of the program.**

Rural Technical Assistance Centers:

Within the Navajo Nation are seven National Park Service administered areas and ten Navajo Nation Park or Recreation areas. Places like Canyon de Chelly National Monument, Monument Valley Navajo Tribal Park, Chaco Canyon Culture National Historical Park bring over 12 million visitors worldwide to the Navajo Nation annually. In 1987, the Navajo Nation and adjacent bordertowns to the Nation had a tourism expenditure that totalled \$540 million. However, the Navajo Nation collected (approximately) only seven percent of this total. The reason is simple. Bordering towns have adequate infrastructure, goods and services while the Navajo Nation does not. In 1993, the

approximate tourism expenditure has increased to over \$600 million for the same area, but the Navajo Nation is only capturing three to five percent of this total. Again, it is the lack of new development for tourism infrastructure services and roads within the Navajo Nation that puts us at a gross disadvantage.

ISTEA, pursuant to 23 USC 326, authorizes the establishment of Indian Rural Technical Assistance Centers, to provide training in transportation planning, project selection, tourism and recreational travel planning and project development. However, under 23 USC 204(b) it is within the BIA's discretion whether to allocate funds out of the IRR program to establish these centers. The Navajo Nation has yet to receive any funding from the BIA to establish these centers. **The Navajo Nation strongly urges the Subcommittee to mandate and make non-discretionary the allocation of BIA administrative funds to establish these much needed rural technical assistance program centers authorized under ISTEA.**

Problems caused by the BIA and FHWA's interpretation of ISTEA:

Many of the problems faced by American Indian tribes exist as a result of the federal government's (BIA and FHWA) interpretation and implementation of the IRR program. The Navajo Nation believes that these two agencies ignore P.L. 93-638, as amended, the Indian Self-Determination and Education Assistance Act and interpret the laws, policies and guidelines, not for the benefit of Indian tribes as required, but for the benefit of the federal government. P.L. 93-638 is designed to assure maximum Indian participation in the direction of federal programs. The following are problems we have encountered:

a. BIA's Division of Transportation and the FHWA are reluctant to carry out the federal government's policy of Indian Self-Determination. Pursuant to 23 USC 204(e) Indian tribes may contract with the BIA for any aspect of roads planning and construction programs authorized for Indian tribes under ISTEA. The Navajo Nation specifically requested a P.L. 93-638 contract from the BIA covering all aspects of archaeological and environmental surveys and clearances associated with the reservation roads program. The BIA denied the Navajo Nation's request with respect to environmental surveys, evidently preferring to contract that to the Army Corps of Engineers. This adds an unnecessary layer of interagency coordination to the project planning and development process already made cumbersome by the BIA's chronic lack of timely allocation of funds and technical assistance.

b. Tribal requests for the two percent allocated for planning have not been processed in a timely manner resulting in many tribes becoming discouraged with the

IRR program. The Navajo Nation has experienced severe difficulties in FY 1992 and FY 1993 in obligating all ISTEA funds allocated due to the chronic and severe lack of timeliness in the way the BIA manages ISTEA funds and administers P.L. 93-638 contracts. For example, the Navajo Nation has experienced considerable difficulty negotiating transportation planning contracts with the BIA. In FY 1992, it took the Navajo Nation seven months to negotiate the planning contract. The BIA's Navajo Area Office reluctantly accepted the policies of Indian Self-Determination and insisted on a Statement of Work the BIA developed, not the Navajo Nation.

c. There is no tracking system in place for the BIA Central Office to monitor the IRR program to ensure that the best interests of American Indian tribes are being served.

d. The Navajo Nation is very concerned that the road maintenance funds allocated through BIA are not sufficient to maintain current and future roads. Through ongoing studies, the BIA has determined that IRR maintenance funding is 50% underfunded. Alternative funding in the future will be needed to preserve Congress' investment in American Indian roads. The Navajo Nation recommends that the Subcommittee meet with the Interior Appropriations Committee to increase funding.

CONCLUSION

In conclusion, I cannot over-emphasize the importance of transportation infrastructure in Indian Country and in the Navajo Nation. I respectfully request of this Subcommittee to make appropriate inquiries into the concerns the Navajo Nation has voiced. The Navajo Nation greatly appreciates the leadership exercised by this Subcommittee in enacting ISTEA. We look forward to working with the Subcommittee in addressing the issues raised herein and by other Indian tribes.



NAVAJO NATION WASHINGTON OFFICE

PETERSON ZAH
PRESIDENT

FAITH R. ROESSEL, ESQ.
EXECUTIVE DIRECTOR

MARSHALL PLUMMER
VICE-PRESIDENT

April 30, 1993

1101 17TH STREET, N.W., SUITE 200
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-0888
FACSIMILE (202) 775-0875

Joe Italiano, Editor
Public Works and Transportation Committee
2165 Rayburn House Office
Washington, D.C. 20515

Mr. Italiano:

The Navajo Nation Washington Office has been requested by the Transportation and Community Development Committee of the Navajo Nation Council to submit the enclosed testimony on the implementation of the Intermodal Surface Transportation Efficiency Act (ISTEA). The oversight hearing was held on Wednesday, April 28, 1993 at 10:00 a.m. by the Subcommittee on Surface Transportation.

Please include the enclosed testimony for the final written hearing.

Sincerely,

A handwritten signature in cursive script that reads "Faith Roessel".

Faith Roessel, Director
Navajo Nation Washington Office

Enclosure

cc: Sampson Begay, Member, Transportation and Community
Development Committee
Richard Begay, Jr., Member, Transportation and Community
Development Committee

The Legislative Branch
The Navajo Nation

Nelson Gorman, Jr.
Speaker of the
Navajo Nation Council

April 26, 1993

Nick Rahall, II, Chairman
Senate SubCommittee on Surface
Transportation
2104 Rayburn House
Office Building
Washington, D.C. 20515-4804

Dear Mr. Rahall:

The Transportation and Community Development of the Navajo Nation Council ("TCDC") is a Standing Committee of the Navajo Nation Council and is the oversight Committee of the Navajo Nation transportation program. The Committee represents the Navajo Nation in all roads and transportation matters and has along with the Intergovernmental Relations Committee ("IGR") taken official positions on roads and transportation matters for the Navajo Nation.

The Committee is very pleased that the Intermodal Surface Transportation Efficiency Act of 1991, ISTEA, has many new provisions relating to the Indian Reservation Road, IRR program. The Proposed Rule for Statewide Transportation Planning requires that the portion of the plan which includes lands and roads under the jurisdiction of Indian tribal governments will be developed in cooperation with the tribal government and the Secretary of the Interior. This provides Indian tribes with an opportunity to participate in the planning and administration of statewide transportation plans. ISTEA increased funding for the IRR. The Act also authorized flexibility in the use of the funds for such purposes as tourist facilities. These are all very positive improvements that will yield long term benefits for the Navajo Nation and the Navajo people.

We do have, however, some concerns we wish to bring to your attention. We are concerned with the tribal consultation process used by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration FHWA in the administration of the program. We do not believe the tribal consultation process is being carried out as intended by Congress. It is our opinion that responsible agencies do not respond to tribal comments in a timely manner nor do they consider tribal comments in their decisions. On occasion, decisions are made which affect tribes

MEMO: Nick Rahall
DATE: April 26, 1993
PAGE: Two

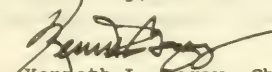
directly prior to requesting tribal comments. The Navajo Nation insists that all consultation be meaningful.

Another matter with which we have concern is the relative needs formula. The Bureau of Indian Affairs has taken over 10 years and \$1.5 million to study and determine how to appropriate funds for reservation roads according to the relative needs of the Indian reservations as required by Title 23 U.S.C., §202(e). Now that they have finally made this determination they have decided to implement the formula over a four year period. These delays are clearly detrimental to the road program for the Navajo Nation. The Navajo Nation will lose approximately \$13 million because of the four year delay in implementing the formula. This is unacceptable. We are attaching for your information copies of the TCDC, IGR and Navajo Nation Council resolutions on this issue.

Additionally, the administration of the IRR program as described in a memorandum of agreement between the FHWA and the Bureau of Indian Affairs relating to Indian Reservation Roads, does not provide for Tribal input or review. Consequently there is no opportunity for Indian tribes to comment on many policy issues. The Bureau of Indian Affairs and FHWA recently announced that Indian Tribes cannot receive advance payments under contracts using the IRR funds pursuant to the and authority of the Indian Self-Determination Act, P.L. 93-638. Such a decision is contrary to the purpose of P.L. 93-638. Decisions such as this that effect tribal sovereignty should be presented to the tribes in a formal process in advance of such decisions so appropriate challenges can be instituted where necessary. Certainly, tribes would have expected review by the Bureau of Indian Affairs Indian Self-Determination program and the Solicitor's Office prior to this announcement, with the two offices taking strong positions on tribal input pursuant to their trustee responsibilities. These issues must be resolved in favor of tribal sovereignty.

We appreciate this opportunity to comment on these very important issues. If you have any questions feel free to contact our staff person, Richard K. Begay, at the Office of the Speaker of the Navajo Nation, telephone no. (602) 871-7160.

Sincerely,



Kenneth L. Begay, Chairperson
Transportation and Community Development

MEMO: Nick Rahall
DATE: April 26, 1993
PAGE: Three

cc: FHWA Mr. Reid Alsop FHW,
Office of Chief Counsel
400 Seventh Street SW
Washington, D.C. 20590

FTA Mr. Paul Verchinski
Resource Management Division
Washington, D.C. 20590

ATTACHMENT: TCDCF-15-93
IGRMA-56-93

RESOLUTION OF THE
TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE
OF THE
NAVAJO NATION COUNCIL

Recommending to the Intergovernmental Relations Committee of the Navajo Nation Council to Oppose the Implementation of the "Relative Need" Formula Allocation Process Which Includes a Transition to the New Formula Over a Four-Year Period,
Fiscal Year 1993 to Fiscal Year 1996

WHEREAS:

1. Pursuant to 2 N.T.C. Sections 420 and 421 (e), the Transportation and Community Development Committee of the Navajo Nation Council is responsible for planning and coordinating all roads and transportation activities of the Navajo Nation; and

2. In a memorandum (Exhibit "A") from Deputy Commissioner of Indian Affairs to all Area Directors on "Relative Need" Formula Implementation, the Deputy Commissioner recommends the "Relative Need" formula follow a transition period of four years (F.Y. 1993 - F.Y. 1996); and

3. If this transition formula is accepted by the Navajo Nation, it will lose \$6,492,000 of road construction fund in Fiscal Year 1993; \$4,328,000 in Fiscal Year 1994; \$2,164,000 in Fiscal Year 1995; and in Fiscal Year 1996 the full amount will be allocated; whereby the Navajo Nation will lose a net total of \$12,984,000 which will impact the Five-Year Road Construction Priority Schedule (attached as Exhibit "B"); and

4. A 100% implementation of the "Relative Need" formula in F.Y. 1993 meets the directive of Congress which justified the contract for an architectural/engineering firm to conduct such a study.

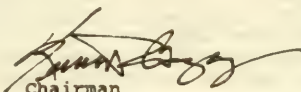
NOW THEREFORE BE IT RESOLVED THAT:

1. The Transportation and Community Development Committee of the Navajo Nation Council hereby recommends to the Intergovernmental Relations Committee of the Navajo Nation Council to oppose the implementation of the "Relative Need" Formula Allocation Process. The recommendation includes a transition to the new formula over a four-year period to be initiated in F.Y. 1993 and completed no later than F.Y. 1996.

2. The Transportation and Community Development Committee of the Navajo Nation Council further recommends to the Intergovernmental Relations Committee to request the Bureau of Indian Affairs to rescind its decision to implement a transition period and implement the "Relative Need" formula at the 100% level.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Transportation and Community Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed, and 0 abstained, this 16th day of February, 1993.



Chairman
Transportation and Community
Development Committee of the
Navajo Nation Council

Motion: Walter Atene

Second: Richard Begay, Jr.

IGRMA-56-93

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

Strenuously Opposing the Implementation of the "Relative
Need" Formula Allocation Process For Highway Trust Funds For
Indian Reservation Roads Using a Transition Period Over a
4-Year Period, Fiscal Year 1993 - Fiscal Year 1996

WHEREAS:

1. Pursuant to 2 N.T.C., Sections 821 and 822, the Intergovernmental Relations Committee is established as a standing committee of the Navajo Nation Council for the purpose of coordinating all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation and to ensure the presence and voice of the Navajo Nation; and

2. The United States Congress, through passage of P.L. 97-424, the Surface Transportation Assistance Act of 1982, Section 126, required the Secretary of Transportation to allocate Indian Reservation Roads funds according to the relative needs of the various reservations as jointly identified by the Secretary of Transportation and the Secretary of the Interior; and

3. In 1987, the Department of the Interior, through the Bureau of Indian Affairs (BIA), Division of Transportation, undertook a national relative need study and let a contract to Architectural/Engineering Group, Inc., an architectural and engineering firm from Baltimore, Maryland, to define relative needs and develop fund allocation methodologies that distribute funds for road construction fairly and equitably to the twelve (12) BIA Area Offices; and

4. This study was conducted between January 1988 and May 1989 and the Department of Transportation and the Department of the Interior accepted and approved the Relative Need Study and agreed on the full implementation of the Relative Need Formula in Fiscal Year 1992 (Attachment "A"); and

5. The Department of the Interior, Bureau of Indian Affairs, issued a memorandum to its Administrative Area Offices announcing its intent to implement the allocation of Indian Reservation Roads funds based on the Relative Need Formula to each Area on a transition basis (Attachment "B"); and

TESTIMONY SUBMITTED BY ANDREA SMITH,
REGIONAL COORDINATOR
FOR THE AFFILIATED TRIBES OF NORTHWEST INDIANS

HOUSE SUB-COMMITTEE ON PUBLIC WORKS

APRIL 28, 1993

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991
IMPLEMENTATION IN INDIAN COUNTRY

My name is Andrea Lynn Smith, I am the Regional Coordinator for the Affiliated Tribes of Northwest Indians (ATNI) and a member of the Makah Tribe. We have joined forces with the National Congress of American Indians (NCAI) to present testimony on implementation of the Intermodal Surface Transportation Efficiency (ISTEA) Act of 1991 on Indian reservations in the United States. Like NCAI, the Affiliated Tribes of Northwest Indians is a council of Tribal governments and ATNI represents 43+ Tribes in Oregon, Washington, Idaho and Western Montana. I am a project consultant to the one of the four Native American Local Technical Assistance Programs (LTAP) and I also sit on the Sub-Committee for Low Volume Roads within the Transportation Research Board. I am responsible for the identification, facilitation and mobilization of resources for the development of Indian communities in the Northwest and the development of Tribal transportation systems has been a priority for my office.

One of the critical issues facing Tribes is sovereignty and the nature of the relationship between the Federal Highway

Administration and Indian Tribes. This understanding is important for successful implementation of Tribal transportation programs. The government to government relationship has been ignored and misunderstood in that the FHWA and the BIA have a memorandum of agreement that does not include the Tribes. Without understanding of this government to government relationship, successful implementation of ISTEA in Indian Country has been hindered. Local input is critically needed to realistically assess the transportation needs of Indian Reservations, which are as follows:

(1) One of the most critical needs is for the Tribes to development their capacity to design and implement their own Transportation systems. The four Native American LTAP Centers, whose primary role is technology transfer, have found that there is no local Tribal staff to transfer this technology to. The BIA has always been responsible for the planning, design and construction of the Indian Reservation Roads. As currently defined in the January 1993 Federal Register, the 2% planning funds available to Indian Tribes may not be used to establish Tribal transportation programs, but can only be used to perform planning activities for specific projects.

2) The new "relative needs" formula the BIA currently utilizes has been extremely unfair to the Northwest Tribes and has not allowed adequate funds for planning. This formula is not based on scientific data and should be revised. Although there was a significant increase from 1991 to 1992 of 101% for the total, and another increase nationally of 18.4% from 1992 to 1993, these

increases were not distributed evenly. The Portland Area Office was the only Area with less than 100% increase from 1991 to 1992. This is a specific example of the how the formula is deficient when you consider the fact that the Portland Area BIA Office has the largest number of Tribal governments to serve and over 7,000 miles reservation mileage to cover.

(3) The 2% level of planning funds is not a realistic level for adequate planning. The funds allocated for planning in the Portland Area budget for FY 1993 budget is only \$300,000. Because planning and engineering development can easily comprise \$100,000-\$300,000 on a major road construction, this will cover only three Tribes in the Portland Area this year. The process for applying for these funds has not been made clear to the Tribes and in the Portland Area Office, only one Tribe out of 43 in the Portland Area has received their 2% Planning Funds to date.

(4) States are not consulting or cooperating with Tribes. This is critical. Currently State Departments of Transportation are the principle funding conduit for Federal Highway Administration funds. A well defined process must be developed to enable the Tribes to work with the State Departments of Transportation on a government to government basis for identifying, budgeting and implementation of projects. This is necessary before the native American Local Technical Assistance Program (LTAP) Technology Transfer program can be successful.

5) The current planning process for Tribes to access ISTEA funds is cumbersome. It appears to be the following: BIA, through the

area offices, asks Tribes to designate their highway needs and priorities. These in turn are reviewed by the BIA Area Administrators. Their recommendations for the next year's program are transmitted to the central office of BIA where they are reviewed, consolidated and with a final recommendation, sent to FHWA. FHWA then transmits this to it's regional and division offices, and they finally send them to the states. This process provides no direct link or participation between the Tribes and States.

We strongly suggest changes in the Intermodal Surface Transportation Efficiency Act of 1991 that would be beneficial to Indian Tribes. The suggestions include:

I. That the Sub-Committee on Surface Transportation provide oversight and monitor closely whether there has been proper implementation of transportation programs and systems on Indian Reservations through the ISTEA Legislation. This should include:

- a) Whether Tribes have the opportunity to participate in the current and future planning of reservation transportation systems. This should include the analysis and update of inventory and classification of reservation road systems.
- b) Whether the "relative needs" formula for appropriating funds to reservations is consistent and equitable throughout the twelve BIA Area Offices.
- c) Whether the 2% planning funds have been properly offered to the Tribes in a manner that totally involves the Tribes and help them build the capacity to address their transportation

problems.

II. Remove the 2% planning fund ceiling and amend Section 1032(j) to include intermodal transportation planning. This would be consistent with the method that states use their federal aid planning and research funds and should eliminate that the 2% planning funds be chargeable to specific projects. Current regulations prevent any long range planning or cooperation with the states on their State Transportation Improvement Program and regional plans. We feel that this would improve the quality of local transportation decisions for maximal and prudent utilization of scarce public resources.

III. Tribes should have access to appropriate funding to cover administrative costs for transportation programs. This is to bring us up to parity with other federal, state and local governments.

IV. We believe, and therefore recommend, that the development of state, tribal, and local relationships should be a working objective of the four Native American LTAP centers. These partnerships would have broad reaching benefits for financially strapped Tribal and rural governments.

V. Permit Tribes within a state boundary to associate with each other to form a Native American Regional Planning Organization to:

- a) Assist the Tribes in developing their own transportation improvement programs;
- b) Negotiate, within the state, with the state transportation agencies and with units of local government on matters relating to highways and other modes of

transportation;

c) Permit the use of a portion of the Indian Reservation Roads planning funds to establish and maintain such an organization.

Thank you for you time and attention and we look forward to successful solutions to identified problems.

Contact: Andrea Smith

Affiliated Tribes of Northwest Indians

825 NE 20th, Suite 310

Portland, OR 97232-2275

503-230-0293 Phone 503-230-0580 Fax

WRITTEN TESTIMONY

John Yellow Bird Steele, President
Oglala Sioux Tribe
Pine Ridge Indian Reservation
Pine Ridge, South Dakota

BEFORE
HOUSE SURFACE TRANSPORTATION SUBCOMMITTEE
PUBLIC WORKS COMMITTEE

1. Introduction

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) provided the tribal membership at Pine Ridge with great hope and expectations. The provisions of the Act that provide for Indian road planning, Transportation Improvement Program, Indian preference on highway projects near reservations, scenic by-ways and the authorization of \$159 million in FY 1992 and \$191 million in FY 1993 through FY 1997, encouraged us for several reasons. First, my Reservation occupies the magnificent Badlands area of the Northern Great Plains. Considerable improvements of the highways and roadways across the Badlands of the Reservation are needed. Second, we were encouraged by ISTEA because the development of infrastructure on the Pine Ridge Indian Reservation is our best source of employment. For at least the past two decades, opportunities for employment have been lower for our tribal membership than at any other location in the Nation. This is reflected in the 1980 and 1990 censuses which show per capita incomes on the Pine Ridge Indian Reservation as the lowest in the Nation.

Implementation of ISTEA, however, is not meeting our expectations. We have not become involved through the Indian Self Determination Act in the planning or design of projects within the Reservation. These functions are sources of income and employment for our tribal membership, but adequate funds have not been available to provide a beneficial program that will meet the needs of the Reservation for roads and highways and at the same time employ our membership. The two percent planning money has not been allocated to our region, to our reservation, or the funds are inadequate to being a meaningful planning and design program. Nor am I aware of any highway projects in either Nebraska or South Dakota near the borders of Pine Ridge that have provided for Indian preference in construction.

2. History of the Pine Ridge Indian Reservation

The Pine Ridge Indian Reservation is located in the southwestern corner of South Dakota along the northern boundary of

Nebraska. The Reservation is in the Northern Great Plains. The western third of the Reservation and the northern fringe are Badlands, formed by erosion of the Pierre shale, the remnants of an ancient sea. The balance of the Reservation is formed of extremely fine sandy materials eroded by wind from the Rocky Mountains and deposited in our area. These fine-grain sands form the Ogallala Aquifer, part of a massive groundwater system that extends from Pine Ridge into Texas.

The Reservation is part of the former Great Sioux Reservation established by the Treaty of 1868 between the United States and the Sioux nation. The 1868 treaty provided that all of the lands west of the Missouri River in what is now the state of South Dakota would comprise the Great Sioux Indian Reservation. The area would be "...set apart for the absolute and undisturbed use and occupation of..." the Sioux Indians. When title to the lands of the Great Sioux Reservation was retained by the Indians, they relinquished a much larger tract of land in Nebraska, Wyoming, Montana and North Dakota. In consideration of the agreement of the Sioux to occupy a smaller land base, the United States agreed to provide the Sioux with all of the needs for a new type of civilization. The consideration by the United States included, among other things, economic development, health, education and infrastructure, such as roads and other institutions, necessary to undertake this new type of civilization. The United States took on the role of trustee for the Great Sioux Nation, a responsibility declared by Congress as follows:

"The Congress finds that...the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation;..." (102 Stat.2566, 1988).

The trust responsibility extends not only to the infrastructure required for public health but also for transportation within the Reservation. It is our belief that ISTEIA was intended by Congress to meet part of its trust responsibility to Indian tribes, including the Sioux. However, as this testimony will disclose, the intent of Congress is not being met.

By 1889, following the illegal taking of the Black Hills from the Great Sioux Reservation and an expedition against General Custer at the Battle of the Little Big Horn, the United States divided the Great Sioux Reservation into nine smaller parts, of which the Pine Ridge Indian Reservation was the largest. The treaty area established in 1868 which averaged approximately 200 miles between the western boundary of South Dakota and the Missouri River and 250 miles between the boundaries of Nebraska and North Dakota was significantly diminished. The Pine Ridge Indian Reservation is about 100 miles from east to west and 50 miles from north to south and is the largest remaining part of the Great Sioux

Reservation.

3. Condition of Road System on Pine Ridge

In 1980 there were over 16,000 persons residing on the Pine Ridge Indian Reservation. The 1990 census is disputed by the Tribe for the reason that the Tribe independently counted several thousand persons not reached by the census. Nevertheless, the 1990 census shows a population of over 14,000 people, which underscores a gross error by the Bureau of Census or a significant out-migration between 1980 and 1990.

Condition of the infrastructure on Pine Ridge, coupled with poor employment opportunities, constitutes a significant reason for out-migration. Recognizing the need for infrastructure, Congress worked out with the Oglala Sioux Tribe in 1988 to authorize the building of the Oglala Sioux Rural Water Supply System, a major drinking water project that will divert water from the Missouri River and deliver it to the Reservation. The project was undertaken because Congress knew that public health within the Reservation was poor and that many public health problems can be attributed to the unsafe and inadequate water supplies available to tribal members.

The road system on Pine Ridge reflects the same inadequacies in basic infrastructure that Congress recognized when it authorized the drinking water project. Most of the traffic entering and leaving the Reservation is between Pine Ridge Village and Rapid City. Travel to Rapid City is for shopping and jobs. Tribal members drive from Pine Ridge Village to the junction of U.S. highway 41 to Red Shirt and across a one land bridge over the Cheyenne River. Thereafter, the route north of the Pine Ridge Indian Reservation is maintained by State and local agencies. BIA highway 41 within the Reservation is paved, but it is respectively submitted that the poor condition of this roadway (51.5 miles) cannot be matched at any other location across the Nation.

BIA highway 41 is relatively straight, so curves are not a major safety hazard. The problem is the narrowness of the road. There are two opposing driving lanes that straddle the centerline of the roadway. The lanes are eleven to twelve feet wide, and the lanes end at the edge of the borrow ditch. There are no shoulders on this road. There was no design or construction of a subgrade that would accommodate the poor soil conditions common throughout the Badlands. Therefore, the pavement shrinks and swells with the seasons. The swells can rise above the normal grade of the roadway by more than a foot, and the distance between swells is less than 50 feet. This condition exists over many miles along BIA highway 41. The pavement is cracked, broken and pot-holed over considerable distances.

The condition of BIA highway 41 is described because it underscores the types of roads on the Pine Ridge Indian Reservation where unemployment is higher and incomes are lower than in any other place in the Nation. Without an adequate road system the tribal membership is not mobile to travel within the Reservation or outside it in search of both jobs, goods and services.

4. Failure in the Implementation of ISTEA

The roadway I have just described is Bureau of Indian Affairs Project #0041, which is scheduled for pavement in FY 1993 at a construction cost of \$1.4 million. This roadway needs major reconstruction, not paving. We are grateful that a paving project will be undertaken, but reconstruction is far more appropriate. Our own workforce employed in the planning and design of this project, as intended by Congress in Section 1032 of the Conference Report on ISTEA, would provide employment within the Reservation and would permit better decision making with regard to long-range use of surface transportation funds. ISTEA intended that we would perform this function, but we have not been given the opportunity.

Bureau of Indian Affairs Highway 41, described above, travels through some of the most scenic lands in the Nation. The road is not only the most direct route for tribal members traveling from Pine Ridge Village to Rapid City, it could easily be included in the scenic by-ways of the Nation (Section 1047, Conference Report 102-404). We are losing the opportunity of this roadway to bring tourism. Improvement of this roadway would provide a benefit to the Nation's public and provide a source of income on the Pine Ridge Indian Reservation. But tourists, having visited Mt. Rushmore and the Black Hills of South Dakota, are turned back from traveling within the Reservation because road conditions as described above are intolerable. The roadway to the north of the Reservation that interconnects with BIA highway 41 is paved to within 8 miles of the north boundary of Pine Ridge. At that location the roadway is gravel. Travelers reach the Pine Ridge Indian Reservation by crossing the Cheyenne River on a one land bridge. Within the Reservation, the one way bridge gives way to two miles of gravel road before reaching the pavement of BIA highway 41.

Our membership is discouraged from using this roadway to seek jobs, goods and services. Travelers from outside the Reservation are discouraged from entering Pine Ridge because of the condition of the off-reservation roadway and BIA highway 41. The tribal membership is capable of planning, designing and constructing the facilities necessary to improve the road system within the Pine Ridge Indian Reservation, but we need the assistance of the Subcommittee to insist upon the proper implementation of ISTEA.

The Oglala membership is highly involved in planning and design of the Oglala Sioux Rural Water Supply System, a \$65.0

million drinking water project to serve the Pine Ridge Indian Reservation and other areas of western South Dakota (102 Stat 2566). We are just as capable of planning and designing a highway system through the Indian Self Determination Act as we are capable of planning and designing the drinking water system through the same legislation (Public Law 93-638). We simply need the opportunity intended by ISTEA but not made available during Simplementation.

It is with great pride that the Oglala Sioux Tribe can report to the Subcommittee that its own workforce has been utilized to reconstruct and pave BIA highway 41 between Sharps Corner and Porcupine. That roadway, as contrasted with BIA highway 41, was reconstructed last year. The finished roadway is built on an excellent subgrade and the finished paving provides a pleasurable ride. Where shoulders did not previously exist, there are now eight foot paved shoulders separated from the driving lanes by clear and distinct striping.

5. Benefits Sought by the Oglala Sioux Tribe from ISTEA

There is no intent in this testimony to deride the Bureau of Indian Affairs or the state of South Dakota Department of Transportation. Those agencies, however, cannot perform the planning, design, construction, operation, maintenance and reconstruction of the highways and roads on the Pine Ridge Indian Reservation as effectively as the members of the Oglala Sioux Tribe. We are receptive to providing our plans to the state of South Dakota for incorporation in statewide planning as intended by Section 1025 of the Conference Report. It is our desire to develop five year planning schedules to share with the state of South Dakota. BIA planning is currently limited to one year at a time.

The Oglala Sioux Tribe would also work with the State of South Dakota to establish scenic by-ways and economic development opportunities as intended by Section 1047 of the Conference Report.

The Tribe has considerable desire to exercise the intent of Congress in Section 1032 of the Conference Report, namely to use Public Law 93-638 (Indian Self Determination Act) to undertake Indian reservation road planning and to develop a Transportation Implementation Program. We have not have access to the two percent of road funds to be allocated for this purpose.

We seek the benefits of Indian preference during construction that was identified in Section 1021 of the Conference Report. The Oglala Sioux feel that the \$58.0 million annually in discretionary funds for public land highways could be used, in part, within Pine Ridge Indian Reservation. We would seek some small part of the 34 percent allocation of \$171 million in discretionary funds made available annually if we were able to take advantage of ISTEA and implement our own planning program through Public Law 93-638.

Finally, we need oversight by the Subcommittee of the methods for allocating funds authorized by ISTEA as will be explained in the following section.

6. Oglala Sioux Tribe Requests Congressional Oversight of Funding Allocation

ISTEA intended that an Indian road study would be made to determine funding needs, and this study would be undertaken by the Secretary of Transportation (Section 1042, Conference Report). We now understand that this study, due in December 1992, was not undertaken for the reason that definitions of Indian reservation roads were modified, and the Federal Highway Administration felt the investigation was not necessary. Instead, the Bureau of Indian Affairs developed a new formula for allocation of funds.

The Oglala Sioux Tribe underscores the fact that the new formula for allocation of funds will seriously damage the Tribe. This testimony will not address the mechanics of arriving at the new allocation of funds, nor will this testimony compare that mechanism with the former mechanism of fund allocations. It is important for the Subcommittee to know, however, that before ISTEA and before a new funding formula was derived, the Aberdeen Area of the Bureau of Indian Affairs received 9.523 percent of available highway funds. The new formula will nearly cut that allocation in half. The Aberdeen Area in the future will only receive 5.519 percent of the available funds. I am informed by my staff that the old formula would have provided \$4.4 million to the Pine Ridge Indian Reservation in 1993 and that the new formula will provide \$2.5 million to the Pine Ridge Indian Reservation in 1997. This decline in funding is a tragedy. As stated previously, employment in the planning, design, construction, operation and maintenance of the infrastructure on the Pine Ridge Indian Reservation is a critical source of employment. The lower level of Federal funds, if we have correctly analyzed them, will prohibit the planning and design efforts sought by the Tribe, and construction activity will actually diminish from its current level. This will be the case despite the fact that Congress in ISTEA provided a significant boost in funding to Indian reservations that will result in \$191 million between 1993 and 1997.

The Oglala Sioux Tribe sincerely appreciates the opportunity to provide written testimony to the Subcommittee and respectfully seeks the assistance of the Subcommittee in the development of a good road system within the Pine Ridge Indian Reservation and improved opportunities, not diminished opportunities, for employment in all aspects of highway and roadway development, namely planning, design, construction, operation and maintenance.

U. S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Oversight Hearings

ON

Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991 (ISTEA)

including

The National Recreational Trails Fund Act

April 28, 1993

Testimony of Carolyn A. Stradley, President
C & S Paving, Inc.

Chairman Rahall, Members of the Subcommittee on Surface Transportation, Ladies and Gentlemen, my name is Carolyn A. Stradley, and I am President of C & S Paving, Inc., Marietta, Georgia.

I am pleased to be able to address this subcommittee on the merits of the National Recreational Trails Fund Act. From my perspective in the highway construction industry, funds appropriated for the trails program that will in turn help to create Project Opportunity are well spent.

The overall benefits of Project Opportunity for the community are numerous. I would like to address those issues that are relevant to our industry. Companies like mine need and want educated, skilled workers.

Background

Let me tell you a little about myself and C & S Paving. I started this company from scratch in January of 1979. All I had

was a pick-up truck and hand tools. It was a non-traditional role for a woman, but it was all I knew. All my work experience was in a paving company, starting out as a secretary/bookkeeper and working my way up to division manager.

But nothing I've ever done is typical. I was orphaned at 11, lived in Appalachia, and never saw indoor plumbing until I married and moved to the city. Since I didn't have a high school education, I had to go back and get my GED before entering Georgia Tech in Civil Engineering. I can relate to the students in Project Opportunity.

In 1986, C & S Paving was awarded the largest single contract by the federal government to a female-owned firm through competitive bidding. We have just completed the paving at the Georgia World Congress Center and the Georgia Dome in Atlanta in preparation for the 1996 Olympics.

National Recreational Trails Fund Act

The appropriation and allocation of gasoline tax revenue to the National Recreational Trails Fund is fair and equitable. It extends the user-pay/user-benefit concept, which is so much a part of the Highway Trust Fund philosophy, to creating and maintaining a recreational trails infrastructure. Commuter and commercial vehicles have reaped the benefit of taxes paid by recreational enthusiasts. Trail users have for a long time paid these gasoline taxes with minimum expectation of recoupment of their investment in America.

Although the National Recreational Trails Fund Act is part of ISTEA, these are not, per se, highway funds but recreational user funds. The highway construction industry realizes that the funds were generated by gasoline taxes from off-road vehicles. Yet, our industry is still getting a huge benefit out of the trails funding component of ISTEA.

Recreational Trails Create Real-World Jobs

The construction industry recognizes the benefits that we gain from projects that instill in young people the skills and the importance of work on America's infrastructure. While the students of Project Opportunity will be building and maintaining trails, it is not inconceivable to think that they might begin to dream about working on highway corridors. Although they cannot yet build highways and related structures, they can begin to learn the concepts of engineering, drainage, linkage, and usage.

Real-World Skills

Building a trail, like paving a road, is a complex affair. Project Opportunity will be using the methods that the Forest Service has developed and found effective. The 4-H staff and all the trainees will receive instruction in these techniques during the staff training and kickoff week. The Forest Service will also work with the 4-H leaders and oversee all labor on Forest Service lands.

On the job site, safety is not an abstract school subject. The responsibility for safety rests with everyone. Project Opportunity will train each participant in All Terrain Vehicle

(ATV) safety, usage and handling, first aid, chainsaw safety, and general safe work habits. I know that this type of training will save American taxpayers like me countless dollars in reduced health care costs and increased productivity.

Out on the work site, ATVs will be used to move people, equipment and supplies in conjunction with trail maintenance and construction. The use of this equipment will no doubt be a major draw for many of the young people who will be involved in Project Opportunity. They will learn a valuable lesson of key importance in our industry.

Equipment must be respected. Equipment that is not respected breaks down and ceases to be functional. The mechanical skills and maintenance techniques that these young people require and learn to utilize in a hands-on environment will save valuable work hours, an important concept that will save countless dollars. Furthermore, learning to use hand tools such as shovels and saws is a skill that will serve these young people for the rest of their lives.

Respect for the equipment is not the whole story. Enough cannot be said about the intangible skills that this project will impart to our youth. Project Opportunity will give these students a feeling of pride and accomplishment that comes from producing something - a usable trail - that will benefit the community.

This translates into an understanding of the work ethic and the pay-off that comes from old-fashioned hard work.

Project Opportunity graduates can use their new skills to get good jobs. They will be acquiring work habits directly

transferrable to a wide range of industries that build and maintain the infrastructure of our country.

Putting in place an undertaking such as Project Opportunity which can be expanded on a national basis through total utilization of National Recreational Trails Fund monies is a major step in preparing a skilled, entry-level work force for the entire transportation construction industry. I see this type of program as being key to holding down the escalating costs in the construction industry attributable to dealing with an unskilled, untrained, unmotivated work force.

Inner City Application

I would like to speak in terms of the benefits that the National Recreational Trails Fund Act and Project Opportunity can have for our inner cities. As recent civil disturbances have demonstrated, the lack of concern about topics affecting minority and urban communities can have serious consequences for this country's social and economic stability. ISTEA, through the National Recreational Trails Fund Act and its application by Project Opportunity, demonstrates a significant concern in these areas. Off-road trail needs are not restricted to mountains and rural areas. Trails are desperately needed in our cities as well. Metro Atlanta, for example, is blessed with limited greenways and open spaces but is in dire need of the resources of this Act to develop and maintain a trails infrastructure.

Project Opportunity will work on the trails of the National Park Service, Chattahoochee River National Recreation Area, and the Outdoor Activity Center, sponsored by Atlanta's Parks and

Recreation Department. The students will come from the community. The full scope of the program will be available to these trainees since the educational and vocational component is being developed in partnership with the Atlanta University Complex, with 100 Black Men of DeKalb [County], and with the United Youth Adult Conference.

Through the Trails Fund Act, those of us with interests in transportation, the environment, conservation and recreation can play a stronger role in providing opportunities and support for youth and families.

Business Participation

As partners from the private sector, we recognize the value of Project Opportunity. Recreational use of the trail system generates income, jobs and a better standard of living for the residents of the region.

Major industries throughout the state, and small businesses like my own are anxious to join in this ISTEA success story. I will be working with Project Opportunity in connection with the Job Fair and the placement of its participants in the work force once they have completed the program. I hope my experience and insight can help these students see the opportunities that exist in this great country.

Industry Support

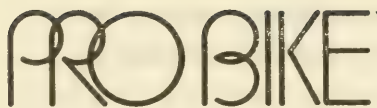
As a member of the transportation community and as one who

derives her income from infrastructure projects, I am vitally interested in the continued funding of the National Recreational Trails Fund Act as a part of ISTEA.

I welcome the efforts of Project Opportunity with open arms and encourage each of you here today to join together with the individuals and corporations throughout our industry and support this funding.

Thank you for the opportunity to address this body. The development of a program that will give young people the skills to build a better life is close to my heart. Your committee has created the means to provide a program that fosters success in the transportation industry, and for that, I am grateful. Thank you for your continued help.

Carolyn A. Stradley, President
C & S Paving, Inc.
Marietta, Georgia
(404) 422-9124.



BICYCLE FEDERATION OF AMERICA

TESTIMONY OF WM. C. WILKINSON III
EXECUTIVE DIRECTOR
BICYCLE FEDERATION OF AMERICA

BEFORE THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SURFACE TRANSPORTATION SUBCOMMITTEE
28 APRIL 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TO DISCUSS HOW BICYCLING AND WALKING ARE DOING IN THE EARLY STAGES OF THE IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA). I AM BILL WILKINSON, THE EXECUTIVE DIRECTOR OF THE BICYCLE FEDERATION OF AMERICA, AND WITH MY TODAY IS ANDY CLARKE ALSO OF THE BICYCLE FEDERATION. I AM ALSO A MEMBER OF THE STEERING COMMITTEE OF THE SURFACE TRANSPORTATION POLICY PROJECT. I HAVE BEEN INVOLVED IN BICYCLE AND PEDESTRIAN TRANSPORTATION PROGRAMS FOR NEARLY 25 YEARS, INCLUDING TIME SPENT WITH THE U.S. DEPARTMENT OF TRANSPORTATION, WITH THE NATIONAL PARK SERVICE, AND WITH A LOCAL GOVERNMENT AGENCY. THE BICYCLE FEDERATION OF AMERICA IS A NATIONAL, NON-PROFIT ORGANIZATION WORKING TO INCREASE THE SAFE USE OF BICYCLES -- AND MORE RECENTLY, WALKING -- FOR TRANSPORTATION AND RECREATION.

BEFORE I SPEAK SPECIFICALLY OF BICYCLE AND PEDESTRIAN ISSUES, I WOULD LIKE TO OFFER SOME GENERAL COMMENTS ABOUT ISTEA. IN 1991, WHEN THE CONGRESS, THE ADMINISTRATION, AND ALL THE OTHER INTERESTED PARTIES TOOK UP REAUTHORIZATION OF THE FEDERAL TRANSPORTATION PROGRAM, THE QUESTION WAS ASKED: WHAT SHOULD BE THE NATURE OF THE FEDERAL TRANSPORTATION PROGRAM OF THE FUTURE? SEVERAL FACTORS CONTRIBUTED TO MAKING THIS AN UNUSUALLY COMPELLING QUESTION.

FOR THE PAST 35 YEARS, THE MAJOR FOCUS OF THE FEDERAL TRANSPORTATION PROGRAM HAS BEEN THE DEVELOPMENT OF THE INTERSTATE HIGHWAY SYSTEM -- THE LARGEST PUBLIC WORKS PROJECT IN HISTORY -- AND THE INTERSTATE SYSTEM IS ESSENTIALLY COMPLETE. YET, WHEN WE LOOKED AT THE PLACES WE LIVE AND WORK -- FOR MOST OF US THIS COUNTRY'S CITIES AND SUBURBS -- WE NOTED THAT TRANSPORTATION

SERVICES WEREN'T BETTER, THEY WERE WORSE. ACROSS THE COUNTRY, PEOPLE WERE (AND STILL ARE) COMPLAINING ABOUT REAL TRANSPORTATION PROBLEMS LIKE TRAFFIC CONGESTION, ROADWAYS IN DISREPAIR, AND TOO MUCH TRAFFIC IN NEIGHBORHOODS. YOU CAN ADD TO THIS LIST OTHER NATIONAL CONCERNS LIKE POOR AIR QUALITY, OVER-DEPENDENCE ON FOREIGN OIL, AND AN ANNUAL TRAFFIC-RELATED DEATH TOLL OF OVER 45,000.

THE CONGRESS RECOGNIZED THESE PROBLEMS AS BEING OF NATIONAL SCOPE, NATIONAL CONCERN, AND NATIONAL SIGNIFICANCE -- THEY REPRESENTED A SET OF CHALLENGES WORTHY OF A FEDERAL TRANSPORTATION PROGRAM. THE QUESTIONS TO BE ADDRESSED BY THE NEW LEGISLATION BECAME WHAT TO DO AND HOW TO DO IT.

A FRIEND OF MINE ONCE PROVIDED THE FOLLOWING DEFINITION OF INSANITY: IT'S DOING THINGS THE SAME WAY AND EXPECTING DIFFERENT RESULTS. THE PROBLEMS GIVEN ABOVE ARE THE PRODUCT OF HOW WE HAVE APPROACHED PLANNING OUR COMMUNITIES AND MANAGING OUR TRANSPORTATION INVESTMENTS. IF WE WANT DIFFERENT OUTCOMES, WE MUST CHANGE THE WAY THE GAME IS PLAYED.

ISTEA IS INTENDED TO PRODUCE DIFFERENT OUTCOMES BY CHANGING THE PROCESS. IT IS IMPORTANT TO NOTE THAT ISTEA DOES NOT PROVIDE A SOLUTION TO OUR PROBLEMS. RATHER, ISTEA CALLS FOR A NEW APPROACH TO TRANSPORTATION INTENDED TO MAKE TRANSPORTATION INVESTMENT DECISIONS AN INTEGRAL, COMPATIBLE PART OF HOW WE ACHIEVE THE BROAD GOALS OF LIVEABLE COMMUNITIES, EFFICIENT USE OF RESOURCES, ENVIRONMENTAL QUALITY, NATIONAL SECURITY, INTERNATIONAL COMPETITIVENESS, QUALITY OF LIFE, AND A SUSTAINABLE TRANSPORTATION SYSTEM.

THE KEY OBJECTIVE OF ISTEA IS TO INTEGRATE DECISION-MAKING ON TRANSPORTATION INVESTMENTS INTO A NEW, BROADER PLANNING PROCESS THAT TAKES INTO CONSIDERATION LAND-USE PLANS, ENVIRONMENTAL NEEDS AND MANDATES (E.G., CLEAN AIR ACT REQUIREMENTS), ECONOMIC DEVELOPMENT, IMPACTS ON INDIVIDUALS AND NEIGHBORHOODS, OPPORTUNITIES FOR ALTERNATIVE MODES, ETC. THE CONCEPT IS FRANKLY SIMPLE: DECISIONS ON TRANSPORTATION MUST BE MADE AS PART OF A COMPREHENSIVE, COORDINATED APPROACH TO PLANNING THE FUTURE OF OUR COMMUNITIES.

ISTEA CALLS FOR A FUNDAMENTALLY DIFFERENT APPROACH TO TRANSPORTATION DECISION-MAKING: MORE ISSUES TO CONSIDER, MORE FACTORS TO BE ADDRESSED, MORE PLANS TO BE PREPARED, MORE MODES TO BE CONSIDERED, MORE FLEXIBLE USE OF FUNDS, MORE INVOLVEMENT BY LOCAL GOVERNMENTS, AND MORE PUBLIC PARTICIPATION. MUCH OF WHAT THIS NEW APPROACH WILL LOOK LIKE AND HOW IT WILL ULTIMATELY BE IMPLEMENTED IS YET TO BE DETERMINED. BUT THIS IS NOT A PROBLEM; IT'S A SOUND WAY TO INSTITUTE THIS KIND OF SEA CHANGE.

I VIEW THIS FIRST SIX-YEAR PERIOD UNDER ISTEA AS A TRANSITION PERIOD. THIS IS WHEN WE TRY NEW THINGS, CHALLENGE OLD ASSUMPTIONS, BRING IN NEW PLAYERS, CREATE NEW VISIONS... AND DEVELOP NEW CONCEPTS FOR TRANSPORTATION SYSTEMS AND SERVICES DESIGNED TO

PROVIDE US WITH COMMUNITIES, ENVIRONMENT, AND LIVES THAT ARE OF THE QUALITY WE DESIRE.

* * * * *

NOW, I'D LIKE TO TURN TO THE TWO MODES OF TRANSPORTATION THAT WE REPRESENT: BICYCLING AND WALKING. LET ME START BY NOTING THAT THERE ARE OVER 100 MILLION BICYCLISTS AND OVER 200 MILLION PEDESTRIANS IN THE UNITED STATES -- WHICH MEANS THAT WE SPEAK FOR MORE INDIVIDUALS THAN DO THE SPOKESPERSONS FOR ANY OF THE OTHER MODES. THIS CONSTITUENCY INCLUDES MANY CHILDREN, ELDERLY, AND DISABLED, AS WELL AS NEARLY 4 MILLION ADULTS WHO USE THEIR BICYCLES TO COMMUTE TO WORK, AT LEAST OCCASIONALLY.

BICYCLING AND WALKING PREDATED THE AUTOMOBILE. BOTH ARE RECOGNIZED AS LEGITIMATE USERS OF THE PUBLIC WAY. YET, FOR MOST OF THIS CENTURY, ACCOMMODATION OF THESE NON-MOTORIZED MODES WAS LARGELY IGNORED WHILE WE, AS A COUNTRY, PLUNGED HEAD-FIRST INTO AN ALL OUT EFFORT TO DEVELOP A TRANSPORTATION SYSTEM WHERE EVERY TRIP AND TRANSPORT NEED COULD BE ACCOMPLISHED BY MOTOR VEHICLE. MEANWHILE, AS FORMER FHWA ADMINISTRATOR TOM LARSON PUT IT, BICYCLING AND WALKING BECAME THE "FORGOTTEN MODES."

TODAY, WE ARE COMING TO RECOGNIZE THE COSTS AND LIMITATIONS ASSOCIATED WITH THIS "MODAL CHAUVINISM." WE BELIEVE THAT THE PUBLIC AND OUR COMMUNITIES (AND NATION) WILL BE BETTER SERVED NOW, AND IN THE FUTURE, IF WE REDEVELOP OUR TRANSPORTATION SYSTEM TO PROVIDE PEOPLE WITH REAL CHOICES AMONG THE MODES: WALKING, BICYCLING, TRANSIT, AND MOTOR VEHICLES.

WE MUST IMPROVE THE TRANSPORTATION INFRASTRUCTURE TO MAKE IT MORE BICYCLE AND PEDESTRIAN FRIENDLY IF WE ARE TO SEE SIGNIFICANT INCREASES IN THE USE OF THE NON-MOTORIZED MODES. TO ACCOMPLISH THIS, THE NEEDS OF BICYCLISTS AND PEDESTRIANS MUST BE CONSIDERED IN THE PLANNING OF TRANSPORTATION FACILITIES AND ADDRESSED AS A ROUTINE PART OF THE DESIGN OF STREETS AND HIGHWAYS. IT WILL ALSO REQUIRE EFFORTS TO "RETROFIT" EXISTING FACILITIES TO ENSURE APPROPRIATE FACILITIES ARE PROVIDED FOR PEOPLE ON FOOT AND ON BIKES. BICYCLE AND PEDESTRIAN ADVOCATES REFER TO THIS PROCESS AS "INSTITUTIONALIZATION" AND SEATTLE, WASHINGTON AND EUGENE, OREGON ARE OUTSTANDING EXAMPLES OF HOW SUCCESSFUL THIS APPROACH CAN BE.

THE NOTION OF MAKING STREETS AND HIGHWAY BICYCLE COMPATIBLE IS NEITHER A NEW NOR A RADICAL SUGGESTION. SINCE 1980, AASHTO HAS CALLED FOR ROADWAY IMPROVEMENTS FOR BICYCLES NOTING,

"TO VARYING EXTENTS, BICYCLES WILL BE RIDDEN ON ALL HIGHWAYS WHERE THEY ARE PERMITTED. ALL NEW HIGHWAYS, EXCEPT THOSE WHERE BICYCLES WILL BE LEGALLY PROHIBITED, SHOULD BE DESIGNED AND CONSTRUCTED UNDER THE ASSUMPTION THAT THEY WILL BE USED BY BICYCLISTS." [AASHTO, GUIDE FOR DEVELOPMENT OF BICYCLE FACILITIES]

THE FLORIDA DEPARTMENT OF TRANSPORTATION HAS JUST INSTITUTIONALIZED SUCH AN APPROACH BY ADOPTING A NEW SET OF ROADWAY DESIGN STANDARDS THAT WILL MAKE BICYCLE AND PEDESTRIAN FACILITIES A ROUTINE PART OF ALL NEW HIGHWAY PROJECTS.

THIS SUMMER THE FEDERAL HIGHWAY ADMINISTRATION WILL COMPLETE A **NATIONAL BICYCLING AND WALKING STUDY**. THIS CONGRESSIONALLY MANDATED REPORT WILL DETAIL ACTIONS REQUIRED TO REALIZE THE POTENTIAL OF THE NON-MOTORIZED TO SERVE TRANSPORTATION NEEDS.

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FINALLY, I WOULD LIKE TO NOTE SOME OF THE BICYCLE AND PEDESTRIAN SPECIFIC WORKINGS OF ISTEA AND DETAIL HOW THEY ARE WORKING AT THIS POINT IN TIME.

1. **TRANSPORTATION ENHANCEMENTS PROGRAM.** I WANT TO BEGIN BY CLEARING UP WHAT I BELIEVE IS A POSSIBLE MIS-PERCEPTION RELATED TO BICYCLING AND WALKING AND THE TRANSPORTATION ENHANCEMENTS PROGRAM OF ISTEA: PROVISIONS FOR BICYCLING AND WALKING ARE NOT "ENHANCEMENTS" TO HIGHWAY FACILITIES. THIS IS RECOGNIZED BY AASHTO IN STATING THAT ALL HIGHWAYS ON WHICH BICYCLES ARE PERMITTED SHOULD BE DESIGNED TO SERVE BICYCLE USE. (THE SAME CAN AND SHOULD BE SAID ON BEHALF OF PEDESTRIANS.) STILL, SOME PEOPLE AND AGENCIES SEEM TO THINK THAT THE ONLY APPROPRIATE FUNDS FOR THE NON-MOTORIZED MODES ARE ENHANCEMENT MONIES. THIS IS WRONG: VIRTUALLY ANY OF THE ISTEA PROGRAMS CAN AND SHOULD BE USED TO FUND ACCOMMODATIONS FOR BICYCLISTS AND PEDESTRIANS, EITHER IN CONJUNCTION WITH ONGOING CONSTRUCTION OR AS INDEPENDENT, RETROFIT-TYPE PROJECTS TO UPGRADE EXISTING HIGHWAYS. HOWEVER, CONDITIONS FOR BICYCLING AND WALKING CAN BE "ENHANCED" IN A VARIETY OF WAYS AND MANY STATES ARE NOW ELECTING TO USE TRANSPORTATION ENHANCEMENTS PROGRAM FUNDS TO CREATE NEW OPPORTUNITIES FOR PEOPLE TO BICYCLE AND WALK.

BUT, AS HAS BEEN NOTED, A COUPLE OF PROBLEMS HAVE DEVELOPED, ONE OF WHICH I WOULD LIKE TO COMMENT ON. ISTEA ESTABLISHES THE ENHANCEMENTS PROGRAM AS A 10% SET-SIDE OF THE SURFACE TRANSPORTATION PROGRAM AUTHORIZATION. THE PROBLEM IS THAT A STATE'S OBLIGATION CEILING IS TYPICALLY LESS THAN THE AUTHORIZATION LEVEL CREATING POSSIBLE DISPUTE AS TO THE LEVEL OF FUNDS (IF ANY) TO BE RESERVED FOR ENHANCEMENT ACTIVITIES. ALSO, WHILE ISTEA CALLS FOR A "SET-ASIDE" FOR ENHANCEMENTS THE LANGUAGE OF THE ACT DOES NOT MAKE CLEAR THAT THESE FUNDS MUST ACTUALLY BE EXPENDED ON ENHANCEMENTS. THE CONGRESS SHOULD MAKE CLEAR ITS INTENT TO FUND ENHANCEMENTS. THIS COULD BE ACCOMPLISHED BY REQUIRING THAT EACH STATE ACTUALLY SPEND 10% OF THEIR TOTAL STP EXPENDITURES ON ENHANCEMENTS.

2. **FEDERAL SHARE FOR BICYCLE AND PEDESTRIAN PROJECTS.** CURRENTLY, WE ARE STRUGGLING WITH THE FHWA OVER THEIR INTERPRETATION OF THE 80/20 MATCH FOR BICYCLE AND PEDESTRIAN PROJECTS. THE BICYCLE AND PEDESTRIAN SECTION OF ISTEA INDICATES THAT PROJECTS WILL BE FUNDED AT 80/20, JUST LIKE MOST PROGRAMS IN ISTEA. SEVERAL AUTHORIZATION SECTIONS CONTAIN SIMILAR SPECIFIC REFERENCES TO MATCH RATIOS. IN THE CASE OF THE BICYCLE AND PEDESTRIAN SECTION IT WAS ADDED TO REFLECT THE FACT THAT THE FORMER MATCH RATIO (100% FEDERAL SHARE) WAS BEING REDUCED TO CONFORM TO THE BASIC PHILOSOPHY EMBODIED IN ISTEA OF CREATING A LEVEL PLAYING FIELD FOR ALL PROJECTS.

THE TROUBLE COMES FROM ANOTHER SECTION OF ISTEA THAT PROVIDES FOR ADJUSTMENTS TO THE FEDERAL SHARE FOR STATES WITH LARGE PERCENTAGES OF FEDERAL LANDS. IN THESE AREA, THE FEDERAL SHARE IS INCREASED (e.g., IN MONTANA THE BASIC 80/20 RATIO IS ADJUSTED TO 87/13). BUT, SINCE THE BICYCLE AND PEDESTRIAN SECTION SPECIFICALLY STATES PROJECTS WILL BE FUNDED 80/20 FHWA HAS DECLARED THAT THIS IS THE MAXIMUM ALLOWABLE FOR SUCH PROJECTS. THIS PUTS BICYCLE AND PEDESTRIAN PROJECTS AT A MAJOR DISADVANTAGE WHEN STATES AND LOCAL GOVERNMENTS ARE CONSIDERING WHICH PROJECTS TO FUND. I DO NOT BELIEVE THAT THIS WAS THE INTENT OF CONGRESS. INTERESTINGLY, THE FHWA ALSO WOULD PREFER TO HAVE ALL 80/20 PROJECTS BE ADJUSTED IN THE SAME FASHION TO AVOID A HODGEPODGE OF RATIOS. THE COMMITTEE AND/OR THE CONGRESS SHOULD TAKE SUCH ACTION AS NECESSARY TO MAKE CLEAR ITS INTENT TO THE FHWA.

3. **BICYCLING, WALKING, AND AIR QUALITY.** MY NEXT CONCERN MAY SOUND A LITTLE ODD, BUT IT TURNS OUT THAT SOME AGENCY STAFF ARE QUESTIONING WHETHER INVESTMENTS IN IMPROVED BICYCLE AND PEDESTRIAN FACILITIES WILL ACTUALLY LEAD TO IMPROVEMENTS IN AIR QUALITY. THEY POINT TO A LACK OF QUANTITATIVE ANALYSIS DOCUMENTING THE ACTUALLY REDUCTION IN EMISSIONS RESULTING FROM NEW BICYCLE AND PEDESTRIAN PROVISIONS. THIS COULD CREATE A MAJOR PROBLEM FOR EFFORTS TO ENCOURAGE GREATER USE OF THESE MODES. MANY COMMUNITIES ARE CONSIDERING USING CONGESTION MITIGATION AND AIR QUALITY FUNDS FOR BICYCLE AND PEDESTRIAN PROJECTS AS TRANSPORTATION CONTROL MEASURES (AS PART OF A CLEAN AIR ACT MANDATED MPO/STATE IMPLEMENTATION PLAN).

THE CRUX OF THE MATTER WILL BE THE DETERMINATION OF WHAT AIR QUALITY IMPROVEMENT CREDITS, IF ANY, WILL BE GIVEN TO AREAS THAT INVEST IN BETTER BICYCLE AND PEDESTRIAN FACILITIES. ALREADY, SOME FHWA DIVISION STAFF ARE TAKING A VERY CONSERVATIVE APPROACH TO RECOGNIZING AIR QUALITY BENEFITS FROM BICYCLE AND PEDESTRIAN PROJECTS. AT THE SAME TIME, THERE HAS BEEN NO EFFORT BY EITHER THE U.S. DOT OR EPA TO UNDERTAKE STUDIES AND/OR PROVIDE CLEAR GUIDELINES ON HOW SUCH DETERMINATIONS CAN BE MADE. THIS MATTER SHOULD RECEIVED PRIORITY ATTENTION.

4. **IMPLEMENTING THE NEW PLANS.** PERHAPS THE GREATEST POTENTIAL FOR SYSTEMIC CHANGES TO IMPROVE CONDITIONS FOR BICYCLING AND WALKING IS IN THE DEVELOPMENT OF THE ISTEA-MANDATED STATE AND MPO LONG RANGE PLANS AND TRANSPORTATION IMPROVEMENT PROGRAMS. FHWA AND FTA HAVE JUST RECENTLY ISSUED A NOTICE OF PROPOSED RULE-MAKING FOR THESE PLANNING PROCESSES. BOTH MPOS AND STATES WILL BE REQUIRED TO ADDRESS THE NEEDS OF BICYCLISTS AND PEDESTRIANS. THEN, THE PLANS ARE INTENDED TO SERVE AS A GUIDE FOR THE DEVELOPMENT OF MPO AND STATE TRANSPORTATION IMPROVEMENT PROGRAMS. I WOULD LIKE TO NOTE THAT AT LEAST ONE STATE AND SEVERAL METROPOLITAN AREAS HAVE ELECTED NOT TO WAIT FOR NEW RULES AND HAVE INITIATED THE DEVELOPMENT OF BICYCLE AND/OR PEDESTRIAN PLANS. THIS INCLUDES NEW JERSEY; DENVER, CO; DURHAM/ORANGE COUNTIES, NC; HOUSTON, TX; AND SAN JOSE, CA.

NEARLY 20 YEARS BEFORE ISTEA, CONGRESS GAVE THE STATES DOT'S THE AUTHORITY TO USE FEDERAL-AID HIGHWAY FUNDS FOR BICYCLE AND PEDESTRIAN IMPROVEMENTS. FEW DID SO. THIS PROMPTED THE BICYCLE FEDERATION TO ASK FOR A CONGRESSIONAL MANDATE FOR INCLUSION OF BICYCLE AND PEDESTRIAN ACCOMMODATIONS IN HIGHWAY PROJECTS SUPPORTED WITH FEDERAL FUNDS. THIS ALMOST HAPPENNED.

IN ITS VERSION OF THE BILL, THE HOUSE REQUIRED PLANNING FOR BICYCLES AND WALKING, AND WHERE SUCH PROVISIONS WERE PLANNED, THAT THEY BE INCLUDED IN ANY SUBSEQUENT, FEDERALLY-FUNDED CONSTRUCTION. UNFORTUNATELY, THE LATTER PASSAGE, THOUGH NON-CONTROVERSIAL, WAS INADVERTENTLY LEFT OUT OF THE FINAL VERSION OF THE BILL. I REFER TO THIS SECTION AS THE "LOST PARAGRAPH" AND HOPE THAT THE COMMITTEE WILL INCLUDE IT IN ANY FUTURE CHANGES TO ISTEA.

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IN CLOSING, I'D LIKE TO NOTE THAT AS WE HAVE TRAVELED AROUND THE COUNTRY OVER THE PAST SIX MONTHS PRESENTING CONFERENCES ON ISTEA FOR PUBLIC AGENCY PERSONNEL, COMMUNITY LEADERS, AND ADVOCATES, WE HAVE DISCOVERED THAT THERE IS TREMENDOUS INTEREST IN THIS NEW PROGRAM. I WOULD LIKE TO CALL THE COMMITTEE'S ATTENTION TO THE FACT THAT WHILE THESE CONFERENCES WERE ORGANIZED BY THE BICYCLE FEDERATION, SURFACE TRANSPORTATION POLICY PROJECT, NATIONAL TRUST FOR HISTORIC PRESERVATION, AND SCENIC AMERICA, THEY WOULD NOT HAVE BEEN POSSIBLE WITHOUT SUPPORT AND PARTICIPATION FROM THE FEDERAL HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, AND ENVIRONMENTAL PROTECTION AGENCY.

MR. CHAIRMAN, THAT COMPLETES MY PREPARED REMARKS. THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY AND WE'D BE PLEASED TO ANSWER ANY QUESTIONS.

IMPLEMENTATION OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

(Safety Issues)

TUESDAY, MAY 4, 1993

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:08 a.m. in room 2167, Rayburn House Office Building, Hon. Nick J. Rahall, II (chairman of the subcommittee) presiding.

Mr. RAHALL. The Subcommittee on Surface Transportation is meeting today to conclude our series of oversight hearings on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. The focus of today's hearing is on safety issues.

Before I recognize our distinguished colleague from that esteemed other body, I would like to include in the record at this point the statement of the Chair of the Full Committee on Public Works and Transportation, the Honorable Norman Y. Mineta.

[Mr. Mineta's prepared statement follows:]

REMARKS BY NORMAN Y. MINETA, CHAIR, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

I am pleased that the Subcommittee on Surface Transportation has devoted a hearing solely to the implementation of the highway safety programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The success of these programs is critical to maintaining the current momentum of steady improvements in the nation's highway safety. They are important in reducing not only the number of personal tragedies on our highways but also the societal and health care costs that occur when people are killed or seriously injured.

I was happy to see an increase in the Administration's Economic Stimulus Package and Fiscal Year 1994 Budget for Section 402, State and Community Highway Safety Grants. I would have been even more pleased if it had been fully funded at the authorized level. This is the "core" of the federal highway safety program and deserves the allocation of the highest level of resources available.

During this hearing, I am looking forward to the testimony of members of Congress, the National Highway Traffic Safety Administration (NHTSA), and a wide array of safety-oriented groups on how key safety programs are being implemented. Programs of particular interest to me include not only Section 402 grants but also, Section 410, the Drunk Driving program; the Drug Recognition Expert program; and Section 153, the Seat Belt-Helmet program.

I recognize that the Seat Belt-Helmet program is controversial. But it has saved lives and health care costs in States where it has been implemented. The balance between personal freedom and social costs must be evaluated when considering this program. In addition, it should be noted that States do not lose money if they fail to comply with its requirements. A small percentage of highway construction funds

are reprogrammed to highway safety purposes if a State has not met the requirements.

A new speed limit measurement and compliance program is being developed by NHTSA. As part of this process, the Administration recently published a notice of proposed rule making (NPRM), outlining its approach and requesting comments. Currently, we are evaluating the NPRM for its consistency with Congressional intent. Developing a workable and equitable system based on the best safety data is critical to the successful implementation of the national maximum speed limit. Success in this area will save many more lives.

Effective implementation of the highway safety programs included in ISTEA are a high priority with me. I look forward to the testimony and suggestions of the witnesses on how well these programs are functioning and, if necessary, what can be done to improve them.

Mr. RAHALL. It's indeed my honor to welcome to the subcommittee a gentleman with whom I have served in this body and also on the Committee on Natural Resources of this body, the gentleman from the State of Colorado, who is a good friend and is an excellent representative of his people. The gentleman from Colorado, Senator Ben Nighthorse Campbell, is recognized.

TESTIMONY OF HON. BEN NIGHTHORSE CAMPBELL, UNITED STATES SENATOR FROM THE STATE OF COLORADO; AND HON. OLYMPIA SNOWE, A REPRESENTATIVE IN CONGRESS FROM MAINE

Senator CAMPBELL. Thank you, Mr. Chairman, and it's a great pleasure for me to come back and see you again. I certainly enjoyed the six years I worked with you here on the House side, and I was talking to your staffer, Jim Zoya, just before we came in to find out how you like your new assignment, and he said in many cases it's less hectic than the Mining Committee. But in this particular issue, it might not be.

Mr. RAHALL. I might add, Ben, it dovetails very well with mining. You know, in order to build highways, we have to have the sand, the gravel, and everything else that it takes to build highways.

Senator CAMPBELL. Yes, I understand that, but this is a totally different issue than we've dealt with in the past, you and I.

As some of the committee Members know, I happen to be an avid motorcyclist, started riding when I was about 18 years old, and have had, I guess, 10 or so over the years. My family rides—my son, my daughter, my wife. All of us do. It's kind of an escape now from the stresses of Congress. Clearly, I don't have as much time as I used to.

But I have worked on this issue of mandatory helmet laws for many years. I guess my interest has really been intensified since we passed the ISTEA Act, which mandated that States individually pass helmet laws. I won't go into all of the details. I have pretty complete testimony based on about a year and a half of research that we've done and statistics that we've tried to gain. With your permission, I'd ask that that be included in the record and ask that I abbreviate my comments.

I recently introduced legislation on the Senate side as a companion bill to Senator Durenberger's bill, which is a repeater bill. My bill, S. 401, is really as a back-up bill in case we cannot get the mandatory section of the ISTEA Act repealed. It does, in effect, postpone the implementation by two years.

I've been concerned with many parts of the ISTEA Act as it deals with helmets. Certainly, part of it is the amount of money that States are having to shift from construction to education. In the case of your State, Mr. Chairman, that will require West Virginia to shift over \$2 million away from highway construction. In the case of my State, almost \$4 million will have to be shifted.

I support it, I might tell you in the beginning. I supported the ISTEA Act when it was originally passed, grudgingly, because in our case of Colorado, it would have cost us about 10,000 jobs and something like \$130 million, which we badly needed. Most of the States that were coming out of a recession a couple of years ago needed that highway construction money, and my State was no different than anybody else's.

But as you know, Senator Durenberger's bill on the Senate side now has 25 co-sponsors. There seems to be a great deal of interest in trying to repeal the mandatory section of the ISTEA Act, and as we get more and more statistics in, I think most of us recognize that the mandatory section being imposed on State legislatures simply is not working.

In the testimony we turned in, I did turn in a little recent synopsis of where the States are, and the States where legislative or executive action has been taken to defeat mandatory laws has happened this year, in 1993, in 14 States. The States that are past the bill filing deadlines where no helmet laws have been introduced, there have been four, and the States that are past the deadlines without any helmet laws being introduced at all, there have been five.

So, clearly, what many States consider to be blackmail on the part of the United States Government isn't working. In our State of Colorado, in fact, a mandatory bill that was introduced this year failed by six to one in committee and never even got to the floor. So I think Colorado, like many States, has just kind of had it with the Federal Government imposing, on behalf of Big Brother, mandatory laws that they have to follow.

There's no question in my mind that Colorado, like many States, has had it both ways. We had a helmet law in effect until 1976, when Congress revoked the Department of Transportation's authority to mandate helmet laws. We repealed ours, and like many States, the talk at that time was that injuries would go up for motorcyclists and deaths would go up, and that simply was not true. In fact, deaths went down and injuries went down, too, like most of the States.

As it is right now, I think that rider education has been the difference. There has been a very strong program in Colorado, like many States, to encourage people—not mandate, but encourage people to go through rider education, and the States now that do not have mandatory helmet laws in fact have a 33 percent lower accident rate than the ones with mandatory helmet laws.

By the way, I might mention those statistics. The fatalities have decreased by 38 percent in those States, accidents have decreased by 41 percent, but the vehicle miles put on by motorcyclists have increased by 85 percent. I think when you compare those statistics, it will tell you that the mandatory section doesn't work, that voluntary and encouraged education does.

In the top 12 States that have the best safety record currently, only one has a mandatory helmet law, and six of the bottom 12 States have mandatory helmet laws. So I think that rider education clearly is the key.

I won't go on. Most of my testimony is very voluminous based on the last year and a half or two that we've tried to collect statistics. But I worked with you for six years, Mr. Chairman, and I know that you know that I've always been a person that kind of believes in States' rights and local control when people try and determine their own destiny in this country, and we often see an erosion of that and an erosion of individual rights from the Federal Government.

I know that there is some concern out West in those independent States in the West about, will we be facing mandatory helmet laws for people who ride bicycles, who ride horses, who ski, who do many things where injuries are a possibility because of the activity? In fact, I can see it now—cowboys wearing full-face helmets when they rodeo. It's almost ludicrous to think that we should do that at the Federal level.

But you know, as I do, too, that things that don't work, certainly we have the opportunity to change, and I look forward to working with you, Mr. Chairman, on trying to make the change either by a total repeal of this or at least a delay until we can study it more. I'll be happy to address any questions you might have.

Thank you.

Mr. RAHALL. Thank you, Ben. You're trying to change things that don't work, like the mining law? Is that another example? [Laughter.]

Senator CAMPBELL. I'm still dealing with that.

Mr. RAHALL. Let me recognize our other distinguished colleague that is a Member of this panel and a very good representative from the State of Maine and a neighbor of mine, not state-wise, but in this particular office building, the gentlelady from Maine, Olympia Snowe.

Olympia, welcome to the subcommittee.

Ms. SNOWE. Thank you, Mr. Chairman. I guess we're all neighbors. The ranking Republican, Mr. Petri, is in the same corridor.

I'm pleased to be able to be here this morning with all of you and also with Senator Campbell on this issue, because we share the same commitment and philosophy with respect to individual choice and the ability of States to determine what kinds of legislation are enacted.

In this instance, as you know, Mr. Chairman, section 153 of the ISTEA is certainly going to be damaging to States that have not complied with the provisions of 1991, which is that they have to enact mandatory helmet and seat belt laws. If they fail to do so by September of 1993, they will lose 1.5 percent of transportation funds that would be otherwise diverted to highway safety programs, and in September of 1995 almost 3 percent will be diverted to highway safety programs.

This means in my State of Maine, for example, that we could expect to lose up to \$850,000, as Senator Campbell mentioned, from construction funds to other highway safety programs that are already funded at the State level. In 1996 and beyond that means

\$1.7 million for the State of Maine. For the 28 States that are not in compliance with this mandatory provision, they will lose \$47 million in 1995 collectively, and beyond 1996 it would be on the basis of \$94 million annually.

That is why I have introduced legislation to repeal the mandatory provisions. I think it's just a matter of approach from the United States Congress and how we dictate to the States exactly what should be the nature of the legislation they should pass; otherwise, they face the penalty and the consequences of losing Federal funds and, in this case, redirecting Federal funds.

Now, I know that before the subcommittee recently there was a representative of the National Conference of State Legislatures, and he indicated to this subcommittee that these were the most infringing provisions on States' rights in ISTEA, and I certainly would concur in that matter. The fact of the matter is, as Senator Campbell has mentioned, there are now 28 States that are not in compliance. In actuality, 14 States this year actually defeated mandatory helmet laws, and another six States have not introduced legislation or the filing deadlines have passed on mandatory helmet laws.

The point in all of this is that the mandatory provisions in the 1991 act is really the Federal Government's intrusion into an area that otherwise is the purview of State government.

Now, State governments have generally regulated every aspect of the driving experience, whether it's age or license, inspection, and insurance, and in this case, a lot of States have taken action, whether they have seen fit to enact a mandatory helmet law or a seat belt law. But that's been their determination, and that is as it should be. And it is a philosophical approach. We could carry this approach ad infinitum on a number of issues that we determine are in the best interest of the citizenry of this country.

But we have to make a distinction in this regard as to what is appropriate for the Federal Government to mandate and to divert funds, which I think is a major issue here. We're not talking about creating incentives for States to adopt specific legislation. What we are now saying is, "We are going to redirect Federal funds that otherwise would come to you for certain programs." These are funds that the States have contributed to the Highway Trust Fund. These are being redistributed to the States on the basis of their contributions and various formulas.

So now we're saying any time the State legislature decides in the interest of the citizens' participation, we're going to decide, "Well, we're going to preempt that citizen participation and enact another law to supersede the actions of the State legislation." I don't think that that's the approach that we want to adopt here in the United States Congress. In fact, I think it's an unfair approach.

Finally, I might say if you look at motorcycle fatalities, the highest number of motorcycle fatalities occurred in 1980, and since that time, they have declined by 45 percent, and as Senator Campbell has mentioned, it's because of rider education and safety awareness. Those are the programs that are going to make a difference. It's going to make bikers ride better, it's going to make drivers drive better. That's the importance here. And the States have been at the forefront of these education programs. In fact, 39 of the 41

States already have their own rider education program through fees that they impose on license registration for motorcycles. Thirty-nine of those States adopted that program well in advance of the Congress adopting the 1991 provisions.

Now, I know that some have indicated that California has declined in its motorcycle fatalities since the enactment of the motorcycle legislation, but I would take note that California enacted that legislation in the summer of 1991. They made a determination representing the interests of their State or representing the citizens' position on that issue in their State. The fact of the matter is it should be a State determination, and I would hope that the committee would reconsider this position that was taken in 1991, because it is penalizing, Mr. Chairman, and Members of the committee.

I think, frankly, it's just the wrong approach. It's counterproductive, engages in coercive tactics, and I think that there's a better approach in encouraging incentives for the States to adopt specific laws, if we determine that that's what we want to do, or to encourage them to adopt safety programs, which they're already doing. The fact is each State should have the prerogative to make the decision as to how they want to tailor their programs that would improve the safety on the highway, whether you're a driver or a biker.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Olympia.

Since I did not recognize him in the beginning, I'll now recognize the ranking minority Member, the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman. I'd ask to have a statement placed in the record.

Mr. RAHALL. Without objection, your prepared statement will appear in the record.

[Mr. Petri's prepared statement follows:]

STATEMENT OF HON. THOMAS E. PETRI, ISTEА OVERSIGHT HEARING—SAFETY

Thank you, Mr. Chairman. This morning, as we conclude our hearings on the implementation of ISTEА, we turn our attention to safety issues. I am pleased to be a cosponsor of H.R. 799, legislation introduced by Representative Snowe to repeal the penalties which will be imposed on states that have not enacted mandatory motorcycle helmet and seat belt laws by September 30th of this year. This is a very important issue in my State of Wisconsin, which to date has not passed a universal helmet law and, apparently, will not do so in the future.

In 1968, Wisconsin did pass a compulsory helmet law, but is proved to be so unpopular that it was repealed in 1978. Wisconsin State law does require a rider under the age of 18 and those with a learner's permit to wear a helmet, and for more than ten years, we have had an aggressive and highly effective motorcycle safety program. In fact, our fatality rate per 100 accidents is lower than many states which have helmet requirements for all riders. I have received a strong message from my constituents and some state officials that they do not want the federal government to step in once again and tell the state how to regulate traffic and safety within its boundaries.

Penalties go into effect in 1995 if states have not passed laws by September 30, 1993. It appears that the threat of construction funds being reprogrammed to safety programs is not having much effect. To date, I believe only one state has enacted a helmet law since ISTEА was passed in 1991. I know that Wisconsin has simply accepted the fact that \$2 to \$4.5 million of construction funds will be reprogrammed and no serious consideration is being given to enacting a helmet law. So I wonder if Section 1031 of ISTEА is having the desired effect.

I know that many of the witnesses will speak to this issue and I look forward to their testimony, as well as that of the other witnesses who are here today. Thank you, Mr. Chairman.

Mr. PETRI. I'd just like to welcome both of our panelists here this morning and to tell you that I'm happy to be a co-sponsor of H.R. 799 that Representative Snowe has introduced. It seems to me that our goal should be safety on the highways, not requiring people to wear helmets. If people can find a better way to achieve safety on the highways than one that we think up here inside the beltway, they ought to be free to go ahead and adopt that better way without incurring penalties from Washington.

In our State we thought we had the best way. We adopted a helmet law in 1968, and after 10 years of experience with it, we repealed it, and now our fatality rate with motorcycles is half that of many States that have mandatory helmet laws. It's declined overall since we repealed our helmet law. So based on our own experience, there has not been an increase in fatalities, but a decrease in fatalities by focusing on education and awareness.

Yes, we do require young people under age 18, when they get a motorcycle license, to have a helmet, but we don't require that people above age 18 wear a helmet if their judgment is, after being educated on the whole situation, that it's not necessary or is counterproductive. It hasn't seemed to have hurt.

Wouldn't you think it would make sense for us—I guess I'll ask the question of both of you—to emphasize safety rather than helmets and to reward States that have low per-mile or per-vehicle, or some combination thereof, fatality rates and penalize States that have high rates. I mean, if the goal is safety, why not look at the safety figures rather than at what people have to wear or how they have to look or something like that while using the highways?

Ms. SNOWE. I think you make an excellent point, and I certainly would be glad, and I'm sure Senator Campbell would, to work with the committee to adopt an approach that would encourage incentives, as you suggested, because we ought to be looking at the bottom line of what States are doing as opposed to what approach is going to predict the outcome. Senator Campbell has given the statistics, and it's true, just because you wear a helmet doesn't mean that you're not going to have accidents or you're not going to have fatalities. That just isn't so, if you've ever ridden a bike.

Senator CAMPBELL. May I just elaborate on that a little bit? I don't think the question is really whether you should or shouldn't. It's how you get people to do it if you want them to do it. Do you beat them over the head with it, as we've done in the ISTEA Act, or do you encourage them to do it? My own personal view is that it doesn't work much anyway, having been a rider for many years.

By the way, I might tell you a little story of two people in California, since my colleague, Olympia Snowe, talked a little bit about California. I know of two people out there who intentionally wore helmets, full-face helmets, full-head helmets with face visor, while they were driving their automobile and were given citations by the local law enforcement officials. They were told the reason they were getting the citations was because it cut down their vision and hearing, and yet that's exactly the other side of the coin they tell you, that it doesn't affect you when you wear them riding a motorcycle,

when you tell people, "Well, they bother me," or "They increase the heat." Some statistics estimate that the temperature inside the helmets, particularly down in the Southwest where I live, goes up by 20 to 25 degrees in the summer. So, you know, there are all kinds of statistics, but I thought I'd pass that on.

Since we're talking of California, there's an economic factor in this, too, and I might mention that in California, after the recently imposed mandatory helmet laws, the State collected statistics showing that its new law has cost the State a great deal of money. After the helmet law went into effect in 1992, motorcycle registrations dropped from 45,068 to 12,514. That cost the State of California \$10 million in new sales taxes and about \$40 million lost in motorcycle accessories and another \$6.5 million lost from registration fees. So that law economically cost California over \$56 million. I thought we were supposed to create jobs, not lose jobs, in this climate.

So there are a lot of different factors that go into this helmet discussion. I understand people who manufacture helmets probably have a very good case when they say everybody ought to wear one. I mean, that's also sales and jobs, too, I suppose. But from my perspective, they simply don't work. Police accident reports that I've reviewed indicate that over 45 percent of the motorcyclists that have been involved in accidents don't have licenses in the first place. That's where education comes in. And 92 percent didn't have any formal training and had less than six months of riding experience. So, clearly, education is the way to go, not mandating it by Big Brother.

Mr. PETRI. Thank you very much. I was happy to notice in your testimony that your wife gave you a product that's made in Wisconsin, a Harley-Davidson. I think they make them in Pennsylvania, too.

Senator CAMPBELL. Yes. In fact, I hope to visit your fine State, I believe it's June 11th and 12th, when they have their 90th anniversary up there.

Mr. PETRI. They're now number one in the world again and, I think, widening their lead as the premier motorcycle.

Senator CAMPBELL. Well, in the case of that American company, that's clearly been a Cinderella story and one of the American products that's shown they can compete with anybody, now controlling something like 85 percent of the world market for heavy motorcycles.

Mr. PETRI. Thank you.

Thank you, Mr. Chairman.

Mr. RAHALL. If you're riding out that way, Ben, you have to go through West Virginia, so we welcome you. [Laughter.]

Let me just make a comment to the panel, because I certainly understand and am sympathetic to what you're saying. It seems like a cruel hoax is being perpetrated upon the motorcycle riding public. First, we have an incentive grants program that is really a disincentive to minimum allocation States, as you've so well demonstrated. Then, under a blackmail regime, we try to force States to enact helmet laws, but we place the burden on motorcycle riders themselves as to what constitutes a legal helmet. So I certainly have no love for this program. It really smacks of Big Brotherism,

if you will, as you have demonstrated, and I hope maybe we can make some corrections in it.

As you know, in last year's technical corrections bill that we had in the House, we had your recommendations, Ben, for a one-year delay. You had it in your bill over in the Senate, if I'm recalling the history correctly. Then, when it went to the Appropriations Committee, the technical amendments the Senate made in the appropriating committee, the one-year delay was not in that package and, therefore, was not enacted.

Senator CAMPBELL. We sort of ran out of time. I recognize that, Mr. Chairman.

Ms. SNOWE. I might also add, Mr. Chairman, the proposed rules by the National Transportation Safety Administration have no definition of helmet, and I just think that I want to bring that to your attention. I know others will who will be testifying as well. They have a definition of motorcycle, motor vehicle, passenger vehicle, and safety belt, but they have no definition of helmet.

Mr. RAHALL. Good point.

The gentleman from Arkansas, Mr. Hutchinson?

Mr. HUTCHINSON. Thank you, Mr. Chairman, and I appreciate the panel being here today. Thank you for your testimony today in a very articulate, I think, expression of the way many of us feel, that these issues, in particular the helmet safety issue, should be under the purview of the legislatures in the various States as opposed to some kind of Federal mandate that we've imposed.

I also am very delighted to be a co-sponsor of that legislation that would rectify this, and as a former State legislator in Arkansas, where we have helmet laws, I can fully sympathize with the sense of frustration that State legislators have with these kinds of coercive provisions and mandatory Federal provisions.

I think, Senator, you made an excellent point when you observed that where do we draw the line on these kinds of things? How far do we mandate? Where there may be a safety issue involved, do we on the Federal level assume that, in infinite wisdom, we will continue to impose mandates across the board in various other areas? And if not, then why have we selected this particular area?

In Arkansas we had in the Public Health Committee, on which I served, some vigorous and heated debates on the wisdom of helmet laws and whether or not they actually worked or whether educational programs would not be better, and it seems to me, and I would like your reaction to this, that if there is still debate as to a safety issue and what is the best approach on a safety issue, that it would be far better to leave that to State legislatures across the country, where we have models to observe, data to collect, to determine what's the wisest approach as opposed to making an arbitrary determination federally and then imposing that. I would like to hear your reaction to that.

Senator CAMPBELL. Well, most States that have encouraged rider education programs, as ours has in Colorado, the rider education programs themselves require that you wear a helmet when you go through training. When people finish the training, of course, depending on the State law, they may or they may not, but it would seem to me that if they can convince people through education that they're going to cut down their chances of being injured, that's up

to them, the people themselves, to decide whether they want to wear them or not.

The real problem I have is the mandated portion. I happen to wear them sometimes. The reason I wear a helmet sometimes is my ears get cold in Colorado, not because I think it's going to protect me at all, because I don't think it's going to. But that's the only time I wear them in Colorado, and if you've ever been out to see our beautiful country, you know why you don't want anything obstructing your vision.

But the thesis, I think, among the people who support mandatory helmet laws is that those who might be injured become a public burden. That's the word you keep hearing over and over. But if we're going to use that thesis, I don't know why you can't apply the same logic to everything else, as I mentioned, with skiers and horseback riders and so on, because the same thing applies. If they get injured, they could become a public burden if they don't have some insurance for themselves.

So you have to say, as you did already, where do we end the thing? Do we declare anything in America in which you may get injured and, therefore, may become a public burden—do we then impose some kind of requirement that we control your life because you may become a public burden? And at what point do we say, "Wait a minute. There are some individual rights we have to deal with here, too"? So I just don't think the public burden thesis cuts it. It doesn't fit.

Ms. SNOWE. First of all, I want to thank you for your support of the legislation I've introduced and of our position. I appreciate that. As you mentioned that you were formally a State legislator, I think you can appreciate that. I, too, was a State legislator in the Maine State Legislature back in the 1970s, so I can always appreciate when we get these mandates imposed on State legislatures when they have already predetermined, through citizens' participation and public hearings and the consideration of every bill, at least in the State of Maine Legislature, that's ever introduced—this year, in fact, we did not have a bill introduced in the State of Maine concerning mandatory helmet laws, because the people have spoken on this issue before, the legislature has considered such legislation before, and it has been rejected.

Rider education is really important, and driver education is critically important, and I've just been very impressed by the breadth of programs that have been offered at the State level with respect to these programs. People need to know how to drive better. If they feel, you know, superficially insulated by wearing a helmet but don't know how to drive correctly and ride correctly, then you have a serious problem. I happen to wear a helmet when I ride a motorcycle, because I personally think it's important. But that's the choice that I have made for myself.

It's interesting to note that we don't even have standards on helmets in this country. They have not been adopted. That's another problem in terms of what kind of helmets would be safer than other kinds of helmets.

The point is it's a choice that has to be made on an individual basis, but more than anything else, I would want to know how to ride a bike and how to drive a car safely and to protect myself and

others who are on the highway. That knowledge is critically important, and I think the statistics are very critical in this instance to show that those States that don't have a mandatory helmet law have very high safety factors. So I think that that's what we have to look at as the bottom line in creating incentives for the States to adopt an approach that meets their needs and would fit the bill in their particular State.

Mr. HUTCHINSON. Well, I thank the panel, and I think the Chairman was certainly accurate in his depiction that this smacks of Big Brotherism. I thank you for your observations.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from California, Mr. Tucker?

Mr. TUCKER. Thank you very much, Mr. Chairman.

This is obviously a very interesting topic to come before this subcommittee, and, obviously, we have very distinguished panelists to come and edify us. Being one from California, this is obviously a topic that is well-discussed out in California. In fact, very recently on a trip to my district, a gentleman stopped me who noticed the congressional plate on my car and told me, "Hey, buddy, get rid of the mandatory helmet law." [Laughter.]

So there's a vote for your lobby.

A curious question to either one of our panelists. You indicated that in States that do not have the mandatory law, there are higher safety standards or there's greater evidence of safety. Do you have any idea what you would attribute that to?

Senator CAMPBELL. Increased rider education. I believe that most of the States do have strong programs. I know in my State of Colorado, there's a waiting list to get into most of the rider education programs. Some of them are sponsored by city colleges, some by individual groups like ABATE or different manufacturers groups and so on that use public facilities, and they're certified by their State departments of transportation. My feeling is that during the last 10 years, there's been a huge surge of people who voluntarily enter those training programs and become safer and better riders.

Ms. SNOWE. I know, for example, in the State of Maine the United Bikers of Maine has done a great job in emphasizing rider safety, and they have sponsored seminars and programs specifically for that purpose so that they can educate their membership on how to ride a bike better and to improve their safety habits, and it has worked very well. That's why I think it has improved in our State.

Senator CAMPBELL. In California, too, I might mention, Congressman Tucker, you have about 800,000 currently riding. It's my understanding that in the California legislature this year a repeal only missed by one vote. You may look into that, but it came very close to being repealed in California this year.

Mr. TUCKER. Well, I'm well aware that the gentleman who introduced the bill in fact did not win reelection, so I don't know if that—

[Laughter.]

Senator CAMPBELL. Yes, I know. I get mail from California. They take great satisfaction in participating in that election.

Mr. TUCKER. You mentioned, Congresswoman, an interesting point about the lack of any kind of uniformity of standards for hel-

mets. Does that mean that when they talk about the mandate for helmets, some helmets have visors and some don't—

Ms. SNOWE. Straps. That's right.

Mr. TUCKER. Some do and some don't.

Ms. SNOWE. That's right.

Mr. TUCKER. So there's just a whole panoply of different types.

Ms. SNOWE. Yes. Different kinds, and some can in fact cause injury, serious injury. The weight of a helmet also can be a factor. So those standards haven't been modified for a very long time.

Mr. TUCKER. Well, Senator and Congresswoman, I certainly appreciate this opportunity not only to hear you, but to be educated, because I think that most of us coming into the 1990s get on a track and tact of thinking about safety kind of inadvertently and thinking we've got to go to the next step, the next step, the next step, and as you indicated, where do you draw the line? We're going to have helmets in our kitchens, I guess, before we can do the dishes or something. You think that it's a responsible position, but you need to have the other side of the issue, and I've most certainly been enlightened by that.

Senator CAMPBELL. I might mention, two weeks ago I went to a rally that was sponsored by the Southern California Harley-Davidson Dealers Association. There are 18 of them in California. They sponsor a big event every year in Laughlin, Nevada. There were about 25,000 people there, and most of them were from California. I asked a number of them about how legislation was going not only dealing with helmets, but the California desert bill, as you know, some are concerned with, and they told me almost collectively when I talked to them that they never got involved politically before because they didn't think anything like a mandatory law could pass. They were complacent, and they just didn't get involved, and it kind of snuck up on them and did pass.

I guess that should be a lesson to all of us, that if you want to protect your individual liberties, you've got to stay awake. You can't just assume somebody else is going to do it for you, because it very simply doesn't work.

Mr. TUCKER. They may be intending and thinking that they're doing you a favor, but in the long run they've taken away your liberties.

Senator CAMPBELL. They have, yes.

I might also, Mr. Chairman, tell you just a little closing story before I leave. When I was out there at that rally, I had been riding a couple of days, and I was pretty wind-blown and red-eyed and wearing what normally you wear when you ride motorcycles, which is protective leather. I stopped in the hotel and got checked in, and I decided to get a cup of coffee, and the young lady that showed me to my seat said, "Gee, there are a lot of motorcyclists in town." I said, "Yes, sure is," and she said, "What do you do?" I said, "If I tell you what I do, you're not going to believe it," and she said, "Yes, I'll believe it." So I said, "I'm a United States Senator," and she said, "I don't believe it." [Laughter.]

Mr. TUCKER. Mr. Chairman, thank you.

Senator CAMPBELL. Thank you for your time, Mr. Chairman.

Mr. RAHALL. I won't comment on that, Ben. [Laughter.]

The gentleman from Georgia, I believe, was next, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I appreciate the comments of both Members. You know, I've served in local government and State government as well as being in this position here, and I, too, get tired of federally mandated dog-and-pony shows for States and local government, the fact that we require them to jump through certain hoops so that when they get through the hoop, we'll reward them with a new Milk Bone. So I commend you for your efforts and hope you're successful in your attempt to change the regulations.

Thank you.

Ms. SNOWE. Thank you for your support.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard?

Mr. POSHARD. Thank you, Mr. Chairman. I'll be very brief. I apologize for getting to the committee late.

I would just say that I am a cosponsor of Congresswoman Snowe's bill. I, during the last year, have had the opportunity to spend a lot of time with the ABATE groups in my district, and I've been amazed at the amount of education that those groups have brought to the public concerning this mandatory helmet law, concerning motorcycle safety, the ability of the groups to hold training sessions, skill sessions, educational opportunities for people on how to ride motorcycles safely. I think more than any Government agency, these voluntary groups are bringing educational issues to the forefront with regard to the safe riding of motorcycles throughout our society, and I'm very supportive of Congresswoman Snowe and her bill and wish her great success with that.

Ms. SNOWE. Thank you for your support.

Mr. RAHALL. The gentleman from California, Mr. Kim?

Mr. KIM. Thank you, Mr. Chairman.

Again, thank you for your fine presentation. I associate with the comments of my colleague from Georgia. He said exactly what I was going to say. The State of California already has mandatory helmet regulations, and I don't think it's our job to add further mandates or even discuss this motorcycle helmet incentive program. I think it's up to the State. Again, I share the view of my colleague. I think it's ridiculous that we're imposing additional regulations and we should just stay out of this state issue.

I never served in State government. I have a private business background, and I am really tired of government mandates. Here we go again and I think we should just stay out of this.

Thank you again, Mr. Chairman.

Ms. SNOWE. Thank you.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. I have no questions, Mr. Chairman.

Mr. RAHALL. The gentleman from New Hampshire, Mr. Zelif?

Mr. ZELIFF. Thank you, Mr. Chairman. With all these positive comments around the room here—I haven't heard any negatives yet—I wonder how this thing ever got passed in the first place, but I'll leave that one aside.

Senator Campbell, Congresswoman Snowe, my friend and colleague from Maine, I'm a co-sponsor of the bill. I'll do everything I can from my end to see that it gets passed. As you probably know, New Hampshire, the "live free or die" State, believes in inde-

pendence. If you look at our record in terms of education, a good job has been done. We probably have among the highest users of seat belts in the country, and we've done our homework relative to the helmet law as well. We're kind of fed up with Big Brother. I just have to name two towns, Wakefield and Peterborough, who turned down the emergency FEMA money for the snowstorms. We don't like that kind of stuff, either.

This, I think, is a huge intrusion of States' rights. It ought to be up to the individual States to do the job that they should do. I think withholding highway funds from people who buy gasoline and put money in as excise taxes in terms of trust funds ought to be spent for the reasons that it was intended and passed in the first place.

So, Mr. Chairman, thank you for the opportunity to comment, and I congratulate both of you. I think we're on the right track, and it's about time we got this thing put in the right perspective.

Ms. SNOWE. I want to thank the representative from my neighboring State, and I share your commitment to independent thinking. I think that the State of New Hampshire is a lot like the State of Maine, and people prefer to make their own individual choices, and certainly the State legislatures and local communities prefer to approach the problems within their State on a local and State basis. So I just appreciate your commitment. Thank you.

Mr. ZELIFF. It's what empowerment is all about, isn't it?

Ms. SNOWE. That's exactly right.

Mr. ZELIFF. Mr. Chairman, I have a prepared statement that I would like to submit for the record.

Mr. RAHALL. Without objection, so ordered.

[Mr. Zeliff's prepared statement follows:]

STATEMENT OF THE HONORABLE WILLIAM H. ZELIFF

Mr. Chairman, thank you for calling this hearing today on the safety provisions included in the Intermodal Surface Transportation Efficiency Act of 1991.

Mr. Chairman, ISTEA represents the most innovative and extensive restructuring of Federal transportation policy since this Nation dedicated itself to creating a national highway system 34 years ago.

Transportation policy has a direct impact on our quality of life, and the vision of that policy will determine whether business and commerce flourishes in this country or falls by the wayside. ISTEA introduced the country to the word "intermodal," and the law sets out to create and promote a strategy which stresses the linking of differing transportation modes.

If this Nation is to compete in the increasingly competitive global marketplace, we need to have the transportation infrastructure to support and nurture new businesses and facilitate the expansion of existing ones.

ISTEA placed the Nation's focus on the critical need for efficient transportation. We have developed a transportation strategy that plans for the next century by making America an integrated, intermodal society.

I am hopeful that we truly have accomplished this task, that Congress has taken that all important first step toward addressing our Nation's surface transportation needs through passage of ISTEA.

Mr. Chairman, I am looking forward to hearing today's testimony on the implementation and impact of the safety provisions of ISTEA.

I am especially looking forward to the testimony provided by our distinguished colleague, Congresswoman Olympia Snowe, and others, in support of her legislation to repeal the section in ISTEA requiring States to adopt mandatory motorcycle helmet and seatbelt laws.

I support Olympia Snowe's bill, H.R. 799, for the simple reason that I believe that this question should be left to the States to decide.

We have heard a great deal over the course of the last several weeks, in this subcommittee and in others that I serve in, regarding the frustration among States, in-

cluding New Hampshire, over the continual stream of Federal mandates coming out of Washington.

While certainly well-intentioned, the mandatory helmet and seatbelt provisions in ISTEA represent a gross intrusion into a State's right to enact laws that it believes are in the best interests of its people. Congress chose in its wisdom to enact a provision in ISTEA that threatens to withhold State highway construction and maintenance funds from States that fail to enact mandatory seatbelt and helmet laws by September of this year.

This is big government at its worst, Mr. Chairman. We must put a stop to the mindset which assumes that "Washington knows best" and remove this restrictive mandate from the back's of State legislatures.

I strongly support Ms. Snowe's legislation, and I will actively work on behalf of my State and the 29 others to see that this Federal mandate is lifted.

Mr. RAHALL. The gentleman from New Jersey, Mr. Franks?

Mr. FRANKS. No questions.

Mr. RAHALL. The gentleman from Pennsylvania, Mr. Clinger?

Mr. CLINGER. Thank you, Mr. Chairman. I just want to commend our colleagues, Senator Campbell and Congresswoman Snowe, for everything that's been said. I'm proud to be a sponsor of your bill. Again, I think it's going in the right direction, and I think everybody has said the word. It is a States' rights issue. It really is a question of how much the heavy hand of the Federal Government needs to get involved in these things, and I think we've become too involved in these things. So I wish you well and want to do whatever I can to make sure it becomes law.

Ms. SNOWE. Thank you very much. I appreciate your support.

Mr. RAHALL. Thank you very much, both of you.

Our next witness is Mr. Howard M. Smolkin, the Acting Administrator, National Highway Traffic Safety Administration.

Welcome to the subcommittee, Mr. Smolkin. As with all witnesses today, we do have copies of all prepared testimony, and without objection, they will be made a part of the record as if actually read at the beginning of each panel, and witnesses are encouraged to summarize and proceed in the manner they desire.

TESTIMONY OF HOWARD M. SMOLKIN, ACTING ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ACCOMPANIED BY ADELE DERBY, ASSOCIATE ADMINISTRATOR FOR REGIONAL OPERATIONS, MICHAEL BROWNLEE, ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS, AND GEORGE PARKER, ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Mr. SMOLKIN. Thank you, Mr. Chairman. I'm very pleased to appear before you today. With me are Adele Derby, the Associate Administrator for Regional Operations; to my right, Michael Brownlee, Associate Administrator for Traffic Safety Programs; and to his right, George Parker, Associate Administrator for Research and Development.

Before I discuss NHTSA's implementation of ISTEA's highway safety provisions, let me give you a brief status report on highway safety across the Nation. Highway safety assessment should begin with one fact firmly in mind: the number of people killed on our highways. This year we have good reason to be encouraged. In 1992 the Nation experienced its lowest motor vehicle fatality total in 30 years: 39,200. This represents a 5 percent drop from 1991's total of 41,462. In 1992 the fatality rate fell to 1.8 deaths per 100

million vehicle miles traveled, an all-time low. This contrasts with the rate of 2.8 in 1982. If the 1982 fatality rate had remained unchanged, an additional 22,000 people would have lost their lives in 1992.

Several factors contributed to this trend—safer roads, safer vehicles, higher levels of safety belt use, and the growth of public sentiment against drunk driving—and many of these factors are directly influenced by ISTEA's Highway Safety Program. While we have made much progress in highway safety, motor vehicle crashes are still the Nation's number one cause of death for persons 5 to 32 years old, the biggest cause of serious injuries, and the fourth leading killer of people of all ages. Much more remains to be done to reduce the magnitude of the highway safety problem.

A key element in further improving the highway safety picture is the section 402 Highway Safety Program. This section provides funds to the States for a broad array of programs which the States tailor to meet their distinctive requirements. At present, eight 402 programs are deemed most effective in reducing highway crashes and the resulting deaths and injuries. These programs qualify for funding under an expedited approval process.

ISTEA requires us to consider adding two programs to the priority list: speed enforcement and pupil transportation. This summer we will issue a notice on whether to add these programs. We will also issue a notice during the summer on new highway safety guidelines and update the guidelines for current priority programs.

In the drunk driving area, ISTEA made many changes in the section 410 Drunk Driving Prevention Program. In 1992 we published an interim final rule to implement these changes. This April we published a final rule making additional changes required by the fiscal year 1993 Department of Transportation Appropriations Act. In fiscal year 1992 17 States received grants under ISTEA provisions. We anticipate that the number of States eligible for 410 grants will increase under the new changes.

With regard to occupant protection, ISTEA's section 153 Safety Belt and Motorcycle Helmet Grant Program has been the subject of considerable attention. Beginning in fiscal year 1992, ISTEA authorized three years of incentive grants to States with both belt and motorcycle helmet use laws. In fiscal year 1992 NHTSA awarded \$12 million in section 153 grants to 17 States, the District of Columbia, and Puerto Rico. The statute also provides, as has been discussed this morning, that a State without both belt and helmet use laws by October 1, 1993, must transfer a percentage of its fiscal year 1995 Federal highway funds in certain programs to its section 402 Highway Safety Program.

Last January NHTSA and Federal Highways jointly issued a Notice of Proposed Rulemaking to define the terms of section 153's transfer penalty. We anticipate issuing a final rule early this summer. Several bills have been introduced this Congress to amend section 153's penalty transfer provision. In the House, H.R. 799, introduced by Congresswoman Snowe, who discussed it with us this morning, would repeal the penalty transfer provision.

The Department opposes this bill. We believe the existing statute, with its combination of incentives and transfers, provides a very constructive way to encourage the States to enact laws that

contribute significantly to reducing motor vehicle fatalities and injuries and the related suffering and costs. Many of these costs are ultimately paid for by the taxpayer through Federal and State public assistance programs. Safety belt and motorcycle helmet laws sharply reduce these costs.

Helmets are about 29 percent effective in preventing motorcyclist fatalities. Safety belts reduce the risk of fatal injury by 40 to 50 percent. That belt and helmet use laws reduce fatalities and related costs society incurs is beyond question.

In addition to occupant protection, the reduction of excessive speed is an important part of NHTSA's program. ISTEA made substantial revisions to the section 154 National Maximum Speed Limit Program. NHTSA and the Federal Highways Administration issued a joint Notice of Proposed Rulemaking last December addressing these matters. A final rule will be issued this summer.†

In closing, Mr. Chairman, let me note NHTSA's strong support for ISTEA's emphasis on safety research. While it retained the basic provision of NHTSA's section 403 Highway Safety Research Program, ISTEA also established DOT's Intelligent Vehicle Highway System program, IVHS. Last year NHTSA played an important role in developing DOT's IVHS strategic plan submitted to Congress in December, as ISTEA required. NHTSA's continuing responsibility is to provide the critical safety focus for the program. In keeping with this responsibility, NHTSA is examining the opportunities IVHS offers for improvements in crash avoidance and is conducting safety evaluations of IVHS operational tests.

This concludes my prepared remarks. My colleagues and I will be glad to answer any questions you may have.

Mr. RAHALL. Thank you, Mr. Smolkin, for your testimony. Let me begin by asking you a couple of questions, and then, when he'd like, I'm going to yield to the Chairman of our full committee.

The decrease in highway fatalities, of course, is very encouraging. In your opinion, has the recession in any way contributed to the lower fatality rate?

Mr. SMOLKIN. Yes, sir. I believe it's very difficult to estimate the effects of economic trends on the reduction of fatalities. Nevertheless, it is known that with a decline in discretionary driving, there tends to be some reduction in fatalities. It's very difficult to quantify exactly how much. Nevertheless, we believe a significant drop is accounted for by much greater safety belt use and much greater public awareness of drunk driving issues.

Mr. RAHALL. At this point, I will yield to our distinguished full committee Chair, Mr. Mineta.

The CHAIR. Well, let me acknowledge the presence of the acting administrator.

Mr. Administrator, let me ask about—one of the things that I'm starting to hear is the fact that there are no standards for helmet laws, and I think the State of California law enforcement agencies are now not citing based on the kind of head apparel you may have. I suppose anything short of a baseball cap is okay. So what would be considered your perception or idea of what is a helmet under section 153?

Mr. SMOLKIN. Mr. Chairman, thank you for the opportunity to clarify this issue. In fact, there are Federal standards that deal

with motorcycle helmets. Under the National Traffic and Motor Vehicle Safety Act of 1966, NHTSA has the responsibility for establishing safety standards for motor vehicle equipment, and there are standards for motorcycle helmets. Helmets sold for use on the Nation's highways are required to meet the requirements of Federal motor vehicle safety standard 218. So your example of a baseball cap, sir, would not meet the crash requirements or the penetration requirements that are currently part of the Federal standard.

In addition to setting standards, we try to educate the public as to what makes a good helmet and why people should use a good helmet, and I'd like to have Mr. Brownlee talk to us a little about what types of education we've been trying to carry on to help the public understand what makes a good helmet.

Mr. BROWNLEE. There are several different kinds of headgear that are being sold in the field as motorcycle helmets. Clearly, those that comply with the standard are being sold. There are others that do not. We have recently developed some educational materials for the law enforcement community and others on some tips that they can use to identify those that comply and those that do not. For the most part, those that do not are very much smaller, very much thinner, do not have the padding necessary in order to protect under the standard that Mr. Smolkin discussed.

Law enforcement agencies throughout the country, and, I might note, in California specifically, have been asking for this information for some time, and we are very pleased that we were able to provide some help to them.

The CHAIR. Let me ask, Mr. Smolkin or Mr. Brownlee, have those standards been established through the normal Administrative Procedures Act?

Mr. SMOLKIN. Yes, sir. We have established the motorcycle helmet standard through the formal rulemaking process, which requires us to give the public an opportunity to comment on the standards we propose before we take action and establish a final rule which officially sets the standard.

The CHAIR. So you're in the process right now of doing that?

Mr. SMOLKIN. No, sir. That standard is in place currently.

The CHAIR. Well, then, what's the question that seems to be occurring with law enforcement agencies? Are they the ones who are still not sure? I mean, what about these what I would call the—I guess sometimes characterized as beanie types or the kinds—I don't know how else to describe it.

Mr. BROWNLEE. Let me try and clarify that, Mr. Mineta. Universally, and I believe this is without exception, States that have laws requiring motorcycle helmet use reference the Federal standard. They say you must be wearing a helmet that complies with the Federal standard that Mr. Smolkin talked about. There are many helmets out there that are characterized as helmets but do not meet that standard. The law enforcement communities throughout the country are looking for some information to help distinguish between the two, and that is the basis for some of the advisory and educational information we have given back to the law enforcement community.

In some instances, those novelty helmets, as they're called, are sold right beside those that do comply with the Federal standard

in stores, and it's difficult to distinguish between the two. In some cases, there is some out and out deception taking place by copies of the DOT sticker, which connotes compliance with the standards, being placed on these helmets that do not comply. So our program has been to help the law enforcement community and those who are purchasing helmets as well to distinguish between the two.

The CHAIR. If I have a baby seat for my car and ABC manufacturer has model 123, can I go somewhere and look to see whether or not model 123 made by ABC, Inc., is an approved baby seat?

Mr. SMOLKIN. Yes, sir. It would be a violation of Federal law to sell a baby seat that did not comply with Federal standards. If, however, you decided you wanted further confidence in whether that particular seat had had a defect and may have been recalled for repair, you could call our agency's Auto Hotline, and our operators would tell you whether there were any outstanding recalls on that seat, indicating that changes might have to be made. But the basic point is that people are not allowed to sell seats that do not comply with Federal regulations.

The CHAIR. So if I look at model 123 of a helmet that is purported to comply with Federal law, made by ABC, Inc., can I go to a similar list and know that it is in compliance with the law?

Mr. BROWNLEE. You can look at the helmet, and you should be able to tell.

Mr. CHAIR. Well, obviously, they can't tell, if the law enforcement agencies aren't citing people. There's something between the cup and lip that's missing that says to the law enforcement agencies, you know, there's—I guess it's not that clear.

Mr. BROWNLEE. Yes. It is not that clear, and there certainly is some deception taking place.

The CHAIR. Deception on whose part, Mr. Brownlee?

Mr. BROWNLEE. On those who might be selling the helmets. Occasionally, you will see among those helmets that do not comply the appearance of the DOT sticker, for example, that can be put on the back of the helmet.

The CHAIR. Are the standards, then, if I can use the child restraint seats as an example, are the two as they relate to helmets and child restraint laws the same, or do we have two different approaches here?

Mr. SMOLKIN. The approaches are the same, sir, and both pieces of motor vehicle equipment must comply with the standards and should contain a label that asserts that they do comply with the standards. There have been some difficulties with manufacturers putting labels on non-complying pieces of equipment.

The CHAIR. But, then, I cannot make a widget and put the Good Housekeeping seal on it, I can't put an Underwriter's Lab seal on it, unless it has been subjected to those tests. Now, how is it that ABC manufacturer of something you can wear on your head is able to put something on that helmet that says "NHTSA Approved, Circular 137D-3J4Z"?

Mr. SMOLKIN. That speaks directly, Mr. Chairman, to the way the Vehicle Safety Act establishes our standards. In the United States, standards for vehicle safety are based on a self-certification principle. The Federal Government establishes standards, but does not test ahead of time every car to meet those standards. A manu-

facturer is required by law to certify, before selling a vehicle or a piece of motor vehicle equipment, that in fact they meet all applicable Federal standards. Now, a manufacturer that just slaps a label on it and says, "Well, I don't meet it, but so what" is in violation of law.

The CHAIR. And who's the enforcement agency on that?

Mr. SMOLKIN. We are, sir.

The CHAIR. Have you ever enforced it?

Mr. SMOLKIN. Yes, sir. We have an ongoing compliance program that tests both vehicles and motor vehicle equipment, and we have taken action against manufacturers.

The CHAIR. Manufacturers of helmets for motorcyclists?

Mr. SMOLKIN. Yes. Motorcycle helmets as well as child seats as well as—

The CHAIR. I'm just talking about in this instance.

Mr. SMOLKIN. Yes, sir, motorcycle helmets.

The CHAIR. What kinds of violations have you pursued there as it relates to motorcycle helmets?

Mr. SMOLKIN. We have the authority, when a helmet or any piece of vehicle equipment doesn't comply, to order a mandatory recall of the helmet.

The CHAIR. Have you done that?

Mr. BROWNLEE. Yes, there have been a number of recalls that deal with helmets, including a—

The CHAIR. Excuse me, Mr. Brownlee. Does "recall" imply a defect in manufacturing—let's say the snap doesn't hold or something—or does it mean that this beanie doesn't comply with the law?

Mr. SMOLKIN. There are two kinds of defects, sir, under the Motor Vehicle Safety Act. One is a defect based on a failure to comply with standards, a compliance defect. The other type of defect is an aspect of design or manufacture that, in use, makes a product unsafe. We have the authority to recall a helmet under either of those parts of the law.

The CHAIR. So if, let's say, you have gone through and you have a closed loop in terms of the hearings process on establishing standards, closure of the notice time period, promulgation of rules, publication, enforcement, then why is there some question by local law enforcement agencies as to whether or not there's a question about model 123 made by ABC, Inc., being in compliance with section 153?

Mr. BROWNLEE. I think, clearly, Mr. Chairman, there are some attempts to skirt the law here as well.

The CHAIR. By law enforcement agencies?

Mr. BROWNLEE. No, sir. By those that are selling helmets and by those that might be purchasing them. The legal requirements in a State require that a helmet comply with our standard. Many of the people who ride in those States would rather not wear a helmet that complies with the standard; and there are vendors out there as well who are happy to sell helmets that do not comply with the standard and let the rider take that risk.

The CHAIR. I assume, then, that the enforcement as it relates to standards is your job.

Mr. BROWNLEE. Our agency's, yes, sir. Not mine specifically.

The CHAIR. How aggressively are you pursuing, then, the enforcement of the law against those who are trying to end-run it?

Mr. BROWNLEE. I can give you a partial answer to that, Mr. Chairman. I can tell you that helmets that are brought on the market, that first are brought on the market, are screened by our enforcement staff. They select those helmets and bring them in for testing. In some cases, and I might point out that this is a very real problem that exists because, these helmets are not being sold as motorcycle helmets. They're being sold for other purposes, novelty helmets and so on; but riders are putting them on their heads in an effort to try and at least convince the enforcement community that they are complying with the law. I think it is there that the law enforcement community has needed and asked for some to help identify those helmets.

The CHAIR. But if I manufacture a helmet and advertise it as being in compliance, then no matter how much I advertise it doesn't make it so.

Mr. BROWNLEE. That's correct.

The CHAIR. So, then, it seems to me it's enforcement of compliance that is not taking place. Whose responsibility is that?

Mr. SMOLKIN. It is our responsibility, sir. We have a responsibility for ensuring compliance of helmets as well as all vehicles and other types of motor vehicle safety equipment. Within our budgetary resources, we do conduct compliance tests, and we take action against manufacturers that fail those compliance tests. In many cases, such as the ones that Mr. Brownlee was describing, we're not even aware in time of a manufacturer, particularly a small manufacturer, that puts a product on the market that purports to be a motorcycle helmet until it's brought to our attention by questions raised by the police.

The CHAIR. What kind of an educational program do you have going with the law enforcement agencies, then, on trying to get them to better understand what you're doing and making sure they're in compliance with it?

Mr. BROWNLEE. We have recently developed a video, with the assistance of the Maryland State Police, which goes through the various kinds of problems that exist and the mechanisms by which the enforcement community might recognize a helmet that does not comply with standards. There are some written materials that go along with that as well, and those materials have now been distributed throughout the country.

The CHAIR. If I go into a motorcycle shop and I buy a helmet, get on my bike and go down the road, and the police pull me over and say, "That's not a proper helmet," it seems to me I'm the one that's getting cited, I'm the one that's getting fined, and, you know, I went to the Brownlee Shop and Mr. Brownlee said, "Oh, yes, this is in compliance." I have no recourse to you? I can't come to you and say, "Mr. Brownlee, you sold me this helmet. I've got to now pay a \$50 fine or whatever the fine is, and you sold me this thing"? So now all of a sudden the onus is on me, the rider, not the manufacturer, not the person who sold the thing. How do we bridge this thing so that we beat this problem?

Mr. BROWNLEE. Let me try and explain a bit more how this process works, and maybe that will shed some light on this. If a retail

outlet sells a helmet that does not comply with the Federal standard and that retail outlet is aware of that and the person is aware of it, both could be in violation. The problem here is that usually those helmets that do not comply are not sold as motorcycle helmets. They're sold as novelty helmets, helmets that do not have the DOT sticker on them and so on, and may be purchased in retail outlets alongside other helmets that comply. They are not represented as motorcycle helmets, but then some users will take that helmet and ride with it, trying to convince the police that they are complying with the State law that requires a helmet that complies with the standard when in fact they are not.

The CHAIR. Even though it's sold as a novelty helmet, if it is not in compliance with the—okay, I see. That's where the enforcement comes in.

Mr. BROWNLEE. That's right.

The CHAIR. Well, it looks like we're going to have to be doing a lot more educating, a lot more aggressive—when's the last time you had, let's say, a safety seminar or something to pull in the law enforcement agencies by State and let a principal State law enforcement agency then use their safety funds to inform local agencies on what ought to be done?

Mr. BROWNLEE. That principally would take place at the State level. We think our role is to develop the materials that help to educate throughout the system, make those materials available to the States, and then the State law enforcement community, led by the State—

The CHAIR. Well, like self-certification, you're sort of saying, "All right. The States will do what they want. If they do, they do. If they don't, they don't." Is that right?

Ms. DERBY. Mr. Mineta, we tried to work with them a little bit. I just came from a meeting of the States in Region 9. The headquarters is in San Francisco, and the States that are involved came to that meeting, and that's one of the issues that was discussed. One of the law enforcement people in fact brought it up, and we talked about the use of the video and how to involve more law enforcement people in that educational effort.

But that's how we'll do it. The agency will develop materials and we'll try to get them out, through our regional offices, into the States, into the State highway offices, and, through them, to the local law enforcement people. It just develops this way. I think IACP also is in on that distribution process.

The CHAIR. Well, Mr. Chairman, I think this is an area that we ought to pursue and make sure that we in fact are getting full measure for our section 153. It seems to me we've just got to close the loop on this thing and continue on that educational effort.

All right. Thank you very, very much.

Mr. Chairman, I appreciate your forbearance in giving me the five minutes of time. I yield back the balance of my time. [Laughter.]

Mr. RAHALL. The Chair thanks our distinguished full committee Chairman for his very insightful questions. I found it very interesting and agree that it is an area that we should pursue.

The gentleman from Wisconsin, Mr. Petri?

Mr. PETRI. Thank you very much, Mr. Chairman.

Thank you for coming and testifying. I have a couple of questions. First, I think you proposed primary enforcement of State helmet laws, but secondary enforcement of seat belt laws. Could you explain why you're approaching the two areas in different ways?

Ms. DERBY. Yes. When we put out our Notice of Rulemaking, we tried to look at what was already in place, and, principally, the belt laws provide secondary enforcement. There are no helmet laws with secondary enforcement. They all provide primary enforcement. So we concluded that we would put that in the notice, and comments are coming in on that now for us to consider.

Mr. PETRI. Well, is that because if a State has a secondary enforcement helmet law, it doesn't need a Federal mandate?

Ms. DERBY. That's what we proposed in our Notice of Proposed Rulemaking; that if there was not primary enforcement, it would not meet the requirements of 153 and would be subject to the transfer of funds provision.

Mr. PETRI. And why is that?

Ms. DERBY. We tried to look at what was out there. There are only primary enforcement laws out there for helmets. The agency was concerned that if we recommended or put in the notice that we propose secondary enforcement, we would undermine the helmet use laws that are already in place.

Mr. PETRI. Well, there are a lot that were in place that have already been repealed, and a lot of other States haven't adopted them, and it would seem to me that that would send some signal that you're running into some head wind on this particular thing.

Ms. DERBY. We're at the point of time in our rulemaking now where the period for comments has closed, and we are considering the comments that have come in on it.

Mr. SMOLKIN. Under the Administrative Procedures Act, Mr. Petri, we have an obligation to consider all the comments that have been raised with this on the record, and we anticipate that by this summer we'll be reaching a final decision on that issue.

Mr. PETRI. You agree that was your rationale for proposing primary of helmet, but secondary of seat belts?

Mr. SMOLKIN. Yes, sir.

Mr. PETRI. Nothing to do with risk to the public or anything, it was just you were following the lead of the States in that respect?

Ms. DERBY. In great regard, that's correct. The law enforcement community has been able very effectively to enforce the belt law by secondary enforcement, because there are many other reasons for pulling a motorist over. On the motorcycle helmet provision, this would be more difficult.

Mr. SMOLKIN. Many people also, sir, feel that given the fact that there's almost universal use of helmets when a helmet law is passed, that sending a signal that secondary enforcement would be acceptable is an attempt to weaken the motorcycle helmet law. That was one of the issues that has been raised with us.

Mr. PETRI. Are there many people at your office that are motorcyclists yourselves, or are these people doing something they're not familiar with?

Ms. DERBY. I think the people who run the motorcycle portion of the program in our agency are motorcycle riders.

Mr. PETRI. We have a lot in law enforcement, because, of course, we have motorcycle police and so on.

Ms. DERBY. The person who was in charge of NHTSA's motorcycle program and the person now in charge have been motorcycle riders.

Mr. SMOLKIN. We do have a number of people in the agency, but I can't give you an exact count.

Mr. PETRI. There's an annual get-together of a lot of the motorcycle enthusiasts in Sturgis, South Dakota. Do you get out there have a booth or participate in outreach the way FAA does with airplane enthusiasts and so on? It seems to me that the more you can get in touch with the market, the better off you will be.

Ms. DERBY. Our regional administrator who works in our Denver office is a very, very avid motorcyclist, and he will always go to that rally. He brings with him a motorcycle rider educational program, a very extensive one. He is very involved in the motorcycle community, and we look to him for a lot of our input.

Mr. PARKER. If I might add to that. We've been invited to attend, I believe it's the Motorcycle Riders Foundation convention, for the last couple of years. I have sent people from my office, from the R&D Office, to explain what is good data analysis and what is bad data analysis with regard to the effectiveness of motorcycle helmets and motorcycle helmet laws, and they've been well-received. I think the attendees understand why we send a professional out who is an expert in data analysis. We've even provided seminars for people at those conventions to understand how we analyze that data and how to recognize good analysis and bad analysis.

So we do interact with the groups, and we find it informative from our standpoint. We hope that they find it informative from their standpoint also.

Mr. PETRI. Well, I'm just urging that, if we are concerned about motorcyclists' safety and their well-being, that we don't just impose regulations from afar. If we're really concerned, we ought to be communicating and talking and listening, because they're concerned, too, you know. They have wonderful communications and all sorts of exchanges of information about what works and what doesn't and trying to improve people's awareness of good, responsible community behavior. I think it would be a good idea to improve communications with different motorcycle organizations if they aren't good already.

Mr. BROWNLEE. If I might just add to that, sir. We have relationships with a number of national organizations that deal with safety of motorcycles, including the State licensing agency. Much of the effort that goes on out of my office has to do with education, through those groups, back out to their constituencies and their members, not only on motorcycle helmet use, but on other matters of motorcycle safety as well. It's a substantial program.

Mr. SMOLKIN. I think it's important to note that several of the issues that were raised this morning by our first panel dealt with issues that were intimately involved in the training of motorcycle riders. We happen to share the belief that that's a critically important function, and we'd be happy to submit for the record additional data on the kind of motorcycle education and training that we are involved in. It's fairly extensive.

Mr. RAHALL. The gentleman from New Jersey, Mr. Menendez?

Mr. MENENDEZ. I have no questions.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins?

[No response.]

Mr. RAHALL. Mr. Smolkin, thank you very much. Thank each of you for being with us.

Mr. SMOLKIN. Thank you, Mr. Chairman.

[The following were received from Mr. Smolkin:]

NHTSA uses a wide variety of public information and educational materials on motorcycle safety issues in support of the motorcycle safety priority program under the Section 402 State and Community Highway Safety Program on helmets, impaired riding, motorists awareness, conspicuity, and other motorcycle safety issues. The materials, which are distributed to the states, are also widely distributed through motorcycle, highway safety, and public health organizations.

Recent examples of these materials (attached) include:

(A) NHTSA's 1991 Survey on the Effectiveness of Helmet Use Laws;

(B) *The Effectiveness of Motorcycle Helmets in Preventing Fatalities*, a 1989 NHTSA Technical Report;

(C) Chapter 3 of GAO's 1991 Study, "The Effect of Motorcycle Helmet Laws," analyzing studies comparing fatalities in states retaining universal helmet laws with states repealing such laws;

(D) NHTSA's 1989 Research Notes on "The Effect of Helmet Law Repeal on Motorcycle Fatalities—a Four-Year Update; and

(E) a summary of NHTSA's motorcycle safety outreach activities.

ATTACHMENT AThe Effectiveness of Motorcycle Helmet Use Laws

The National Center for Statistics and Analysis, National Highway Traffic Safety Administration, using Fatal Accident Reporting System (FARS) data for the years 1984 through 1991, has estimated total fatalities and costs resulting from non-use of motorcycle helmets for each state for that period.

The data are presented in the attached table which contains: helmet law status by state; fatalities prevented and costs saved for states with universal helmet usage laws; and fatalities preventable and costs that could have been saved with 100% helmet usage in states with either an age specific law or no law.

Addendum on the Effectiveness of Motorcycle Helmet Use Laws in Saving Lives and Reducing Costs to Society

NHTSA strongly believes that motorcycle helmets offer motorcyclists involved in traffic crashes the best protection from head injury. The passage of helmet use laws governing all motorcycle occupants is the most effective method of getting all motorcyclists to wear helmets. The following highlights several key reasons why helmet use laws should be enacted:

- o Since 1989, six states (OR, NE, TX, WA, CA, and MD) have enacted universal helmet laws. In the first year following enactment OR, NE, TX, and WA experienced fatality reductions of 33, 32, 23 and 15 percent respectively.

- o In CA, preliminary data show a fatality reduction of 47 percent from its universal helmet law enacted on January 1, 1992. It is too early to determine the impact of the MD law.

- o LA, the first state to repeal, then re-adopt, a helmet law showed a 30 percent reduction in motorcycle fatalities during 1982, the first year after re-enactment. This increase occurred even though motorcycle registrations increased 6 percent during the year.

MOTORCYCLE HELMET USE—FATALITIES AND COST—FARS 84-92

STATE	CURRENT LAW	FATALITIES PREVENTED	COST SAVED	FATALITIES PREVENTABLE	COST SAVABLE
AL	Universal	140	\$142,712,645		
AK	Age Specific			13	\$13,744,802
AZ	Age Specific			171	\$186,878,109
AR	Universal	53	\$54,485,341		
CA *	Age Specific			1183	\$1,283,882,660
CO	No Law			106	\$115,029,934
CT	Age Specific			124	\$134,707,980
DE	Age Specific			20	\$21,962,785
DC	Universal	7	\$8,856,657		
FL	Universal	689	\$703,759,662		
GA	Universal	207	\$211,666,462		
HI	Age Specific			36	\$38,171,542
ID	Age Specific			44	\$47,885,589
IL	No Law			301	\$327,439,807
IN	Age Specific			210	\$228,123,946
IA	No Law			114	\$123,217,585
KS	Age Specific			77	\$83,406,755
KY	Universal	88	\$90,156,566		
LA	Universal	115	\$117,591,024		
ME	Age Specific			47	\$50,020,521
MD *	Age Specific			84	\$91,097,811
MA	Universal	196	\$200,545,593		
MI	Universal	290	\$296,365,193		
MN	Age Specific			111	\$120,766,876
MS	Universal	10	\$10,427,775		
MO	Universal	156	\$159,347,922		
MT	Age Specific			39	\$42,427,493
NE	Universal	18	\$18,259,914		
NV	Universal	53	\$53,916,339		
NH	Age Specific			36	\$39,210,514
NJ	Universal	148	\$150,972,426		
NM	Age Specific			81	\$88,401,654
NY	Universal	417	\$426,113,714		
NC	Universal	193	\$196,950,009		
ND	Age Specific			15	\$15,740,171
OH	Age Specific			390	\$424,227,259
OK	Age Specific			104	\$112,496,949
OR	Universal	85	\$86,408,233		
PA	Universal	368	\$375,301,598		
RI	Passenger			26	\$28,455,277
SC	Age Specific			151	\$163,746,337
SD	Age Specific			29	\$32,081,330
TN	Universal	225	\$229,524,071		
TX	Universal	324	\$330,438,261		
UT	Age Specific			60	\$64,462,052
VT	Universal	16	\$16,171,073		
VA	Universal	48	\$49,272,091		
WA	Universal	123	\$125,521,697		
WV	Universal	62	\$62,884,250		
WI	Age Specific			170	\$184,497,010
WY	Age Specific			20	\$22,548,710
TOTALS		4,031	\$4,117,648,516	3,762	\$4,083,631,458



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The Effectiveness of Motorcycle Helmets in Preventing Fatalities

THE EFFECTIVENESS OF MOTORCYCLE HELMET USE IN REDUCING FATALITIES

Donna C. Wilson

SUMMARY

Based on data from NHTSA's Fatal Accident Reporting System (FARS), helmets are estimated to be 27% effective in preventing driver fatalities and 30% effective in preventing passenger fatalities in crashes in which both a motorcycle driver and a passenger were involved. On average, helmets are estimated to be 29% effective in reducing fatalities in motorcycle crashes, which is an average of driver and passenger effectiveness. For the years 1982 through 1987, it is estimated that 4,645 motorcyclists' lives were saved as a result of helmet usage. In total, if all motorcyclists had worn helmets, both drivers and passengers, an estimated 9,030 lives could have been saved over this six year period.

BACKGROUND AND METHODOLOGY

To calculate helmet effectiveness and estimate the number of lives saved by helmet usage, a matched-pairs procedure was employed. In this procedure, the ratio of driver fatalities to passenger fatalities, and passenger fatalities to driver fatalities, are calculated for each of four possible helmet use groups (i.e. both driver and passenger helmeted; both driver and passenger unhelmeted; driver helmeted and passenger unhelmeted; and driver unhelmeted and passenger helmeted). These ratios were calculated for each year individually (1982 through 1987) and for all years combined. Collectively, they provide the basic data used to assess the effectiveness of helmets in preventing fatalities.

This same general procedure has been used previously by Evans (1984)¹, Evans and Frick (1988)², Kahane (1986)³ and Partyka (1988)^{4,5} to estimate the effectiveness of various restraint systems. Evans and Frick also used the procedure to assess the effectiveness of motorcycle helmets in reducing fatalities. A complete explanation of the analytic technique can be found in their paper. A brief example of the technique is provided below:

In total, there were 1,610 driver fatalities and 1,427 passenger fatalities in crashes involving both an unhelmeted driver and an unhelmeted passenger. The fatality ratio for these crashes is:

$$1,610/1,427 = 1.128$$

Thus, about 11 motorcycle drivers are killed for every 10 passengers killed in crashes in which both are unhelmeted.

There were also 168 driver fatalities and 197 passenger fatalities in crashes involving a helmeted driver and an unhelmeted passenger. The fatality ratio for these crashes is:

$$168/197 = 0.853$$

In other words, about 9 drivers are killed for every 10 passengers killed in crashes in which the driver was helmeted, but the passenger was not.

Assuming that helmet use of the driver accounts for the reduction in fatality ratios (1.128 to 0.853), an estimate of the effectiveness of helmets is calculated as:

$$\frac{(1.128 - 0.853)}{1.128} * 100 = 24\%$$

By interpreting these odds as fatality rates, helmets are estimated to be 24% effective in preventing driver fatalities in motorcycle accidents when examining total fatalities and helmet usage from 1982 through 1987. In comparison, an estimate of the effectiveness of helmet use in preventing passenger fatalities can be obtained by comparing the fatality ratio of unhelmeted passengers to unhelmeted drivers (0.886) to the fatality ratio of the helmeted passengers to unhelmeted drivers (0.590) (using the former as the base). This produces an effectiveness estimate of 33%.

The matched-pairs method used in this analysis assumes that the only factor causing the reduction in fatalities in these fatal crashes is helmet usage. Another possible shortcoming of the technique is its limitation to motorcycle crashes involving both a driver and a passenger on the same vehicle in which one or both were killed. These fatal crashes represent only a small portion of total motorcycle fatalities.

RESULTS

The number of driver and passenger fatalities in motorcycle crashes and the corresponding fatality ratios for each helmet use group is shown in Table 1 for each year (1982 through 1987), as well as the total for all years. As can be seen, the number of fatalities in each of these years is not distributed equally among the four groups of occupants. The greatest number of deaths occur in crashes where neither the driver nor the passenger are wearing a helmet. The next greatest number occurs when both the driver and the passenger are helmeted. In examining the data, it is evident there is a consistency in helmet usage patterns between the driver and the passenger, such that when the driver is helmeted so tends to be the passenger. This is also true when the driver is unhelmeted. Thus, on the average, approximately 58% of the deaths occur when there is no helmet usage; 32% of the deaths occur when both driver and passenger are helmeted; 7% when the driver is helmeted and the passenger is unhelmeted and 4% of the deaths occur when the driver is unhelmeted and the passenger is helmeted.

The estimates of effectiveness derived from this data may be affected by the small number of deaths in these latter two categories. The variety of

estimates produced by a single year's data indicates the sensitivity of the estimates to the sample size. However, even though the results within the analysis reflect a fluctuation from year to year due to these differences, overall averages from year to year show that there is reliability in the data since a number of the years produce an average of or near 29%.

TABLE 1
DRIVER/PASSENGER FATALITIES IN MOTORCYCLE CRASH INVOLVEMENTS*
BY HELMET USE STATUS
1982-1987

	Helmet Used		Number of Deaths		Drivers/ Passengers	Passengers/ Drivers
	Driver	Passenger	Driver	Passenger		
1982	No	No	297	237	1.253	0.798
	No	Yes	19	15	1.267	0.789
	Yes	No	37	44	0.841	1.189
	Yes	Yes	183	155	1.181	0.847
1983	No	No	263	224	1.174	0.852
	No	Yes	25	12	2.083	0.480
	Yes	No	24	31	0.774	1.292
	Yes	Yes	160	131	1.221	0.819
1984	No	No	243	232	1.047	0.955
	No	Yes	21	13	1.615	0.619
	Yes	No	30	36	0.833	1.200
	Yes	Yes	147	123	1.195	0.837
1985	No	No	265	236	1.123	0.891
	No	Yes	17	9	1.889	0.529
	Yes	No	31	36	0.861	1.161
	Yes	Yes	144	143	1.007	0.993
1986	No	No	263	247	1.065	0.939
	No	Yes	20	12	1.667	0.600
	Yes	No	26	31	0.839	1.192
	Yes	Yes	158	125	1.264	0.791
1987	No	No	279	251	1.112	0.900
	No	Yes	20	11	1.818	0.550
	Yes	No	20	19	1.053	0.950
	Yes	Yes	125	102	1.225	0.816
Total	No	No	1,610	1,427	1.128	0.886
	No	Yes	122	72	1.694	0.590
	Yes	No	168	197	0.853	1.173
	Yes	Yes	917	779	1.177	0.850

*Crash must involve both a driver and a passenger on the same motorcycle.

Presented in Table 2 are the calculated effectiveness rates of both driver and passenger for each year, and the averages for all years, using the data presented in Table 1.

TABLE 2
HELMET USE EFFECTIVENESS (PERCENT)
FOR MOTORCYCLE DRIVERS AND PASSENGERS
1982-1987

Effectiveness for		Control	1982	1983	1984	1985	1986	1987	Total
Driver:	Unhelmeted passenger		33	34	20	23	21	05	24
	Helmeted passenger		07	41	26	47	24	33	31
Passenger:	Unhelmeted driver		01	44	35	41	36	39	33
	Helmeted driver		29	37	30	14	34	14	28
Driver:	Average		20	38	23	35	23	19	27
Passenger:	Average		15	40	33	28	35	26	30
Both:	Unhelmeted control		17	39	28	32	29	22	29
	Helmeted control		18	39	28	31	29	23	29
Both:	Average		17	39	28	31	29	23	29

As can be seen, driver effectiveness estimates range from 5% to 47%, while passenger estimates range from a low of 1% to a high of 44%. Much of this variation is likely due to the small number of occupants in those groups where only one occupant is helmeted. On average, the estimated effectiveness of helmets in preventing driver fatalities for all years considered in this analysis is 27%. The corresponding estimate for passengers is 30%. All averages for drivers and passengers, as well as, unhelmeted and helmeted controls were computed by using straight averages.

The number of crashes involving small children was also examined to ascertain the degree to which helmet effectiveness estimates were influenced by the presence of small children. There were only 31 small children under the age of six involved in these crashes. Analyses that excluded young children indicated that the helmet effectiveness estimates are not sensitive to the inclusion of children under six or children under thirteen.

ESTIMATED LIVES SAVED BY HELMET USE

Assuming that the estimated effectiveness rates are applicable to all motorcycle fatalities, estimates of the number of lives saved and the number of potential lives that could have been saved can be calculated. A complete explanation of the methodology employed in this section can be found in Partyka (1988). Listed in Table 3 are motorcycle fatalities by helmet use for the years 1982 through 1987. Unknown helmet use has been prorated between known use categories.

TABLE 3
MOTORCYCLE FATALITIES BY HELMET USE STATUS
1982-1987

Year	FATALITIES		Total
	Helmeted	Unhelmeted	
1982	2,002	2,451	4,453
1983	1,805	2,460	4,265
1984	2,003	2,605	4,608
1985	1,933	2,631	4,564
1986	1,989	2,577	4,566
1987	1,640	2,391	4,031
Total	11,372	15,115	26,487

By applying the overall average effectiveness rate of 29% to the helmeted fatality counts, the number of lives saved by helmet usage can be estimated. The formula is as follows:

$$\text{Lives Saved} = \text{Helmeted Fatalities} * \frac{\text{Helmet Use Effectiveness}}{1 - \text{Helmet Use Effectiveness}}$$

For example, there were a total of 2,002 helmeted fatalities in 1982. The above formula is applied as follows:

$$2,002 * \frac{.29}{1 - .29} = 818$$

Thus it is estimated that 818 lives were saved by helmet usage in 1982.

The results for 1982-1987 are shown in Table 4.

TABLE 4
ESTIMATED LIVES SAVED BY HELMET USAGE
1982-1987

<u>Year</u>	<u>Estimated Lives Saved</u>
1982	818
1983	737
1984	818
1985	790
1986	812
1987	670
<u>Total</u>	<u>4,645</u>

This procedure estimates that during 1982 through 1987, helmet usage saved 4,645 lives in fatal motorcycle crashes.

POSSIBLE LIVES THAT COULD HAVE BEEN SAVED BY HELMET USE

More lives could have been saved if all motorcyclists had been wearing helmets. Estimates of the number savable are calculated each year from total fatalities (Table 3), the number of lives saved (Table 4) and overall helmet use effectiveness (Table 2) in the following formula:

Lives That Could Have Been Saved =

(Total Fatalities + Lives Saved) * Helmet Use Effectiveness

The following example shows the number of lives which could have been saved in 1982 if all motorcyclists had worn helmets. There were a total of 4,453 fatalities in 1982 and an estimated 818 lives that were saved by helmet usage. Using the same 29% effectiveness rate, the calculation is:

$$(4,453 + 818) * .29 = 1,529$$

Thus, if the unhelmeted fatalities had also been wearing helmets, it is estimated that a total of 1,529 lives could have been saved. Table 5 shows lives of all motorcyclists that could have been saved from 1982 to 1987.

TABLE 5
ESTIMATES OF LIVES SAVABLE BY HELMET USAGE
1982-1987

<u>Year</u>	<u>Potential Lives</u>
1982	1,529
1983	1,451
1984	1,574
1985	1,553
1986	1,560
1987	1,363
<u>Total</u>	<u>9,030</u>

Thus, an estimated 9,030 lives could have been saved as a result of helmet use from 1982 to 1987.

In summary, although the effectiveness of helmet use depends on many factors (e.g. driver age, speed, crash direction) and the matched-pairs technique has limitations in assessing effectiveness, motorcycle helmets are estimated to be 29% effective in preventing motorcycle rider fatalities. Further, although motorcycle helmets saved an estimated 670 lives in 1987, they could have prevented an additional 693 fatalities if 100% of motorcycle riders wore helmets.

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ATTACHMENT C

GAO Study (1991): Highway Safety Motorcycle Helmet Laws Save Lives and Reduce Costs to Society. This study, conducted at the request of the Senate Committee on Environment and Public Works, is a summary of 46 motorcycle helmet studies, reviewed by GAO. Principal findings are: 1) helmet use reduces fatality rates and injury severity; 2) universal helmet use laws increase helmet use and reduce fatalities; 3) the public bears higher costs for non-helmeted riders.

CHAPTER 3, "UNIVERSAL HELMET LAWS INCREASE HELMET USE AND REDUCE FATALITY RATES," (from GAO's 1991 Study, "The Effect of Motorcycle Helmet Laws")

Table 3.2 of this chapter shows results from seven studies. These studies produced estimates ranging from a 12- to 28-percent reduction in fatalities attributed to universal helmet laws. These studies addressed the period after 1975, when many states repealed or limited their helmet laws. The authors generally compared the experience of repeal states with that of states not changing their laws, but used different analytical approaches.

Figure 3.1 of this chapter shows data reported in one of these studies on the number of fatalities in states that kept their universal helmet laws compared with those that repealed or limited their laws during the years 1976 through 1978. Although motorcycle registrations were still increasing somewhat during these years, the universal law states were leveling off in the number of fatalities while the repeal states had a steady increase.

Table 3.3 of this chapter shows results from 13 studies that used data from state accident reports to compare fatality rates under universal helmet laws with fatality rates before and/or after the laws were in effect. These studies, which used motorcycle registrations as a measure of accident risk, found fatality rates under universal laws ranging 12 to 62 percent lower than comparison periods.

Table 3.4 shows results from 5 studies that compared fatality rates per 100 motorcycle accidents between periods. The universal law periods in these studies had fatality rates ranging from 4 to 41 percent lower than during periods before enactment or after repeal.

Universal Helmet Laws Increase Helmet Use and Reduce Fatality Rates

The studies evaluated showed that most motorcycle riders wore helmets in those states with universal helmet laws. In states with no law or limited laws, roughly half of all the riders wore helmets. Studies of the impact of helmet laws showed substantially lower fatality rates when universal laws were in effect, with most of the results falling in a range of 20 to 40 percent lower.

Universal Helmet Laws Substantially Increase Helmet Use

Nine studies contained data on helmet use from roadside observational surveys or from accident reports (some studies had both kinds of data). As shown in table 3.1, helmet use under universal laws ranged from 92 to 100 percent. Under limited laws, helmet use was similar to use without a law, with most reported rates falling in a range from 42 to 59 percent.

Only four studies had helmet use data for young riders covered by limited laws. In one state, use was still high after the change to a limited law, but appeared to be declining. The other studies showed that use by young riders was not very different from use by riders not covered by the law. This may indicate the impracticality of enforcing a helmet law that applies to only young riders.

Chapter 3
Universal Helmet Laws Increase Helmet Use
and Reduce Fatality Rates

Table 3.1: Helmet Use Under Different Requirements

Studies using roadside observations	Area	Years	Percent helmeted		
			Universal laws	Limited laws	No law
Dorns and Purswell	Okla	1977		52	
Goodell-Grivas, Inc	19 cities	1988	92	44	74 ^a
		1989	98	46	21 ^a
Hurt, et al	Los Angeles	1978-79			49
Krane and Winterfield	Colo	1976			
		1977			58
		1978	100		49
Lund, et al	Tex	1989 ^b	93	42	
McSwain and Willey	La	1982	96		
Struckman-Johnson	S Dak	1976			
		1977		58	
		1978	100	50	
Studies using accident reports					
Dorns and Purswell	Okla	1976		59	
		1977		55	
Heilman, et al	N Dak	1977		55	
		1978		46	
		1979		28	
		1980		28	
Hurt, et al	Los Angeles	1976-77			42 40 ^c
Krane and Winterfield	Colo	1976			
		1977	93		37
Lummis and Dugger	Kans	1975			
		1976	95		42
Struckman-Johnson	S Dak	1976			
		1977		50	
		1978	95	43	

^aChicago only. The 1988 data appeared to reflect only cold weather riding. Three times as many observations were made in 1989.

^bUniversal law reinstated Sept. 1, 1989.

^cAccidents investigated by study team.

Fatality Rates Have Been Consistently Lower Under Universal Helmet Laws

Twenty studies compared fatality rates under universal helmet laws with rates either before enactment of the laws or after they were repealed. These studies varied considerably in the length of time studied, number of states included, and ways of controlling for the influence of factors other than the laws. Nonetheless, every study documented lower fatality rates when universal laws were in effect.

As shown in tables 3.2 through 3.4, the great majority of fatality rates fell in a range 20 to 40 percent lower when universal helmet laws were

in effect. This was a significant degree of consistency for studies differing in scope and analytical technique. If applied to the states which did not have universal helmet laws in 1990, and assuming that motorcyclists in those states were similar to their counterparts in states with universal laws, a 20- to 40-percent reduction in fatalities would have meant a total of about 350 to 700 fewer deaths in those states in 1990.

Although all of the studies had weaknesses (summarized in app. I), when taken together, the consistency of results considerably enhanced the confidence we could place in this body of data. Several studies covered long enough periods to allow a comparison of fatality rates before, during, and after the enforcement of a universal helmet law. These studies showed that declines in fatality rates when universal laws were enacted were matched by similar increases when the laws were repealed.

Table 3.2 shows results from the seven studies that used data from FARS. They produced estimates ranging from a 12- to 28-percent reduction in fatalities attributed to universal helmet laws. These studies addressed the period after 1975, when many states repealed or limited their helmet laws. The authors generally compared the experience of repeal states with that of states not changing their laws, but used different analytical approaches. A drawback for these studies was the unavailability of FARS data before 1975, which meant that prerepeal data were limited for many states.

Table 3.2: Studies Comparing Fatalities in States Retaining Universal Helmet Laws With States Repealing Laws

Studies using FARS data	Period studied	Percent that fatalities remained lower under universal laws
Hertz	1975–88	17
de Wolfe	1975–84	18
Chenier and Evans	1975–82	20–22
Graham and Lee	1975–84	12–22
Berkowitz and Johnson	1976–79	23 ^a
Hartunian, et al	1975–80	24
Watson, et al	1975–78	28

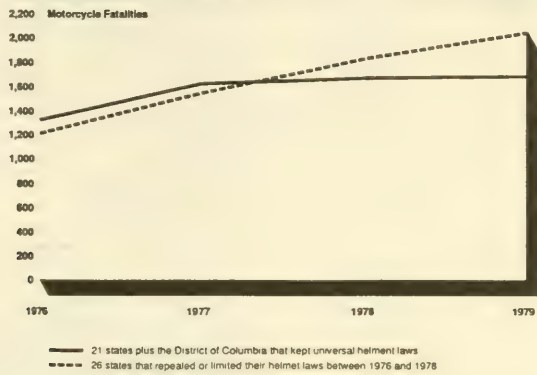
^aGAO calculated this figure from data presented by the authors

Figure 3.1 shows data reported in one of these studies on the number of fatalities in states that kept their universal helmet laws compared with those that repealed or limited their laws during the years 1976 through 1978. Although motorcycle registrations were still

Chapter 3
Universal Helmet Laws Increase Helmet Use
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increasing somewhat during these years, the universal law states were leveling off in the number of fatalities while the repeal states had a steady increase.

Figure 3.1: Fatality Trends Reported in a Multi-State Study



Source: Berkowitz and Johnson. (See app. 1.)

Table 3.3 shows results from 13 studies that used data from state accident reports to compare fatality rates under universal helmet laws with fatality rates before and/or after the laws were in effect. These studies, which used motorcycle registrations as a measure of accident risk, found fatality rates under universal laws ranging 12 to 62 percent lower than comparison periods. Although mileage traveled would be a better measure of exposure, it is not reliably available for motorcycles. Registration data are available, and are more consistent over time than accident data, which are subject to reporting variability.

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Universal Helmet Laws Increase Helmet Use
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Table 3.3: Universal Law Periods
Compared With Prelaw and/or Post-
Repeal Periods Using Fatality Rates per
10,000 Registered Motorcycles

Studies using state accident data	Period studied	Percent universal law period was lower than	
		Prelaw period	Post-repeal period
Struckman-Johnson, et. al. (S. Dak.)	1976-78		12
Wisconsin DOT	1975-80		18
Krane and Winterfield (Colo.)	1964-78	24	23
Scholten and Glover (Ind.)	1962-73		
Berenguel (Iowa)	1974-81*	29	30
Hatton (Ariz.)	1974-77	35	30
Williams and Cleary (Minn.)	1969-85		30
Carr, et al. (Minn.)	1970-80		32-40
Hill (Tex.)	1970-80		31
Robertson (16 states)	1956-87	31	35
McHugh and Raymond (S.C.)	1968-72	35	
Lummis and Dugger (Kans.)	1965-84	20	36
Kim and Willey (Hawaii)	1965-78	38	39
	1962-87	58	62

Note: GAO calculated some of these results from data presented by the authors.

*These authors divided their study period at the introduction of the 55 mph speed limit.

Table 3.4 shows results from 5 studies that compared fatality rates per 100 motorcycle accidents between periods. The universal law periods in these studies had fatality rates ranging from 4 to 41 percent lower than during periods before enactment or after repeal. While these results were further evidence that helmet laws reduce fatality rates, they may have underestimated the effect of the laws. Fatality rates based on reported accidents can be misleading if accident reporting changes between two time periods. A number of studies indicated that reported accidents increased when helmet laws were repealed, possibly because injuries increased. This would make a fatality rate per 100 accidents appear lower during the post-repeal period.

Chapter 3
Universal Helmet Laws Increase Helmet Use
and Reduce Fatality Rates

**Table 3.4: Universal Law Periods
Compared With Prelaw and/or Post-
Repeal Periods Using Fatality Rates per
100 Motorcycle Accidents^a**

Studies using state accident data	Period studied	Percent universal law period was lower than	
		Prelaw period	Post-repeal period
Struckman-Johnson, et al. (S. Dak.)	1976-78		5
Wisconsin DOT	1975-80		24
Krane and Winterfield (Colo.)	1976-78		26
	1962-73		
Scholten and Glover (Ind.)	1974-81 ^b	4	27
Hill (Tex.)	1956-87		41

^aGAO calculated some of these results from data presented by the authors

^bThese authors divided their study period at the introduction of the 55 mph speed limit

ATTACHMENT DNHTSA Research Notes (1989): The Effect of Helmet Law Repeal On
Motorcycle Fatalities, A Four Year Update.

This analysis, an update of NHTSA's estimate of the effects of helmet use law repeal, estimates that motorcyclist fatalities increased 19.6 percent after the repeal of state helmet use laws between 1975 and 1988.

Research Notes



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

September 1989

THE EFFECT OF HELMET LAW REPEAL ON MOTORCYCLE FATALITIES A FOUR YEAR UPDATE

Ellen S. Hertz

Background

Motorcyclist fatalities constitute, on average, about 10% of all fatalities resulting from motor vehicle accidents reported to police each year. In absolute terms, this represents an estimated 3,661 fatalities for 1988, down from a high of 5,144 in 1980 (Fatal Accident Reporting System).

While the number of motorcyclist fatalities is small relative to the total number of motor vehicle fatalities, the fatality rate for motorcyclists is many times greater than the equivalent rate for occupants of passenger vehicles. In 1987, for example, motorcyclists experienced an occupant fatality rate of 41.0 per 100 million miles traveled in comparison to a fatality rate of 1.9 per 100 million miles traveled for passenger vehicle occupants. Motorcyclist fatalities, fatalities per 100 million miles traveled, and several other statistics are presented in Table 1 for the period 1980 through 1988.

Table 1
Selected Motorcyclist Fatality Statistics

Year	Total Fatalities	Motorcycle Fatalities	Percent of Total	MC Fatality* Rate
1980	51,091	5,144	10.1%	50.4
1981	49,301	4,906	10.0%	45.9
1982	43,945	4,453	10.1%	44.9
1983	42,589	4,265	10.0%	48.7
1984	44,257	4,608	10.4%	52.5
1985	43,825	4,564	10.4%	50.2
1986	46,087	4,566	10.0%	48.6
1987	46,390	4,036	9.0%	41.0
1988	47,093	3,661	8.0%	N/A

* Vehicle miles travelled (VMT) estimates from FHWA

One means of preventing motorcyclist fatalities is the imposition of helmet use laws for all motorcyclists. NHTSA estimates helmets are 29% effective in preventing motorcyclist fatalities (Wilson, 1989),

and states requiring all motorcyclists to use helmets consistently report very high use rates. The latest data on helmet use from NHTSA's 19 Cities Survey (July 1989) reflect a usage rate of almost 100% at sites where use laws are in effect, as opposed to a usage rate of approximately 50% at nonlaw survey sites. The degree to which these observed usage rates reflect usage rates nationally, or usage rates for accident involved motorcyclists is unknown. Twenty-two states presently require all motorcyclists to wear a helmet.

Significant changes have occurred in the number of states mandating helmet use by all motorcyclists since 1975. The number of states with such laws decreased from 47 in 1975 to only 19 in 1984. Analysis of the effects of these changes in helmet use laws over this period by de Wolf (1986), estimated that repeal of state laws requiring helmet use for all motorcyclists resulted in an estimated 21.3% increase in the fatality rate (fatalities per crash).

Objective

The objective of the present analysis was to update NHTSA's estimate of the effects of helmet use law repeal, taking advantage of the four additional years of experience available since de Wolf's original analysis (1985-1988). Oregon was the only state during this period to revise its helmet law, requiring all riders to be helmeted beginning June 14, 1988.

Methodology

A multivariate linear regression model originally developed by de Wolf (1986) was used to update the estimate of helmet law repeal effects. This model uses the fatality rate for motorcyclists (fatalities per crash) as the measure of helmet law effect, and takes into account the effects of a number of other factors, i.e., number of motorcycle registrations, state effects, year effects, and a helmet law effect. The general form of this model is:

$$\text{FATALITY RATE} = A + B \cdot \text{NOLAW} + C \cdot \text{REGISTRATIONS} + D1 \cdot \text{STATE DUMMY1} + \dots + D49 \cdot \text{STATE DUMMY49} + E1 \cdot \text{YEAR DUMMY1} + \dots + E12 \cdot \text{YEAR DUMMY12} + \text{ERROR TERM}$$

For the purposes of this analysis, states requiring helmet use for some, but not all, motorcyclists were considered to not have a helmet law. A complete description of the derivation of this model is contained in de Wolf, 1986. Fatality data were obtained from the Fatal Accident Reporting System (FARS). Total accident and registration data were obtained from the Motorcycle Statistical Annual published by the Motorcycle Industry Council.

Findings

The extension of this model to include an additional 4 years of crash experience produces an estimated 19.6% increase in motorcyclist fatalities resulting from the repeal of helmet use laws during the period 1975 to 1988 (95th percentile confidence limits 9.1% to 31.1%). This estimate differs only slightly from the original estimate of 21.3%, and is

well within the 95th percentile confidence limits for de Wolf's original estimate (10.4% to 33.3%). These findings clearly indicate that the presence of a mandatory helmet use law remains an effective countermeasure for reducing the number of motorcyclist fatalities by approximately 20%.

As further confirmation of these findings regarding helmet law repeal, the paired comparison method used to estimate seat belt benefits was employed to estimate helmet effectiveness. Helmet effectiveness, along with estimates of helmet use, allow an estimate of the effects of helmet law repeal:

- o Helmet effectiveness of 29%.
- o 100% helmet use in states with mandatory use laws covering all motorcyclists.
- o 50% helmet use in nonlaw states.

Utilizing these figures and standard calculations, fatalities are estimated to increase 20.4% as a result of helmet law repeal. This value is essentially identical to both the original and updated estimates of the percent increase in the fatality rate resulting from helmet law repeal.

As the model describes the relationship between the absence of a helmet law and the motorcyclist fatality rate, irrespective of whether or not a law was repealed or simply never enacted, the estimated increase in fatalities can be considered an estimate of the effect of helmet laws per se. Thus, states with no helmet law, regardless of whether or not it was repealed, as opposed to never enacted, are estimated to experience approximately 20% more motorcyclist fatalities than would have occurred otherwise.

Presented in Table 2 are the total number of fatalities in states without helmet laws, and the number of lives that would have been saved in states without helmet laws using both de Wolf's original, and the present updated estimate of effect for 1984 through 1988.

Table 2

Year	Fatalities	Lives Savable by Helmet Laws in States Without Helmet Laws	
		Estimated Effect	
		19.6%	21.3%
1984	2928	480	514
1985	2946	456	517
1986	2986	462	524
1987	2622	406	460
1988	2878	472	505
Total	14360	2276	2520

These data indicate that between 2,276 and 2,520 lives have been lost as a consequence of the lack of helmet use laws covering all motorcyclists in all states for the period 1984 through 1988. These estimates represent between 1% and 2% percent of total occupant fatalities in each of these years. It is worth noting, however, that the trend in motorcycle helmet

use laws that took place between 1975 and 1984 may be reversing. Since the beginning of 1988, three states have enacted helmet laws (Engle, 1989). Oregon's new law took effect June 14, 1988. Nebraska's became effective on January 1, 1989, and Texas's became effective September 1, 1989.

NHTSA will continue to estimate helmet law effectiveness as changes in the status of state mandatory helmet use laws occur.

References

de Wolf, V. "The Effect of Helmet Law Repeal on Motorcycle Fatalities" DOT HS 807 065, NHTSA Technical Report, 1986.

Engle, R., Traffic and Safety Programs, NHTSA. TSP Report, May 1989.

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ATTACHMENT ENHTSA's Motorcycle Safety Outreach Activities

NHTSA's Motorcycle Safety Outreach activities are primarily concerned with: (1) promoting motorcycle rider education and training; and (2) working with motorcycle organizations to ensure that motorcycle safety issues receive the highest priority. In regard to rider education and training, NHTSA's efforts are directly tied to assisting the states, under Section 402 Highway Safety Programs. Motorcycle Safety is one of the priority programs under the Section 402 program.

The agency's efforts in both areas maybe be summarized as follows:

MOTORCYCLE RIDER EDUCATION AND TRAINING

- o In the 1970's, NHTSA sponsored research in the area of motorcycle operator task analysis. The Motorcycle Safety Foundation (MSF) used the results of that research to develop the curricula for two motorcycle rider educational courses. These courses are used today in every state.

- o NHTSA supports the establishment of legislated state rider educational programs, and encourages passage of legislation and the use by the states of their Section 402 highway safety funds to support the start-up costs of such programs.

- o NHTSA promotes participation in motorcycle rider education courses through public information and education materials developed by the agency.

- o NHTSA provides technical assistance and funding to support updating and expanding state and local motorcycle rider educational curriculum.

- o NHTSA works closely with the MSF and the National Association of State Motorcycle Safety Administrators (NASMSA) to support their efforts in rider education.

- o NHTSA developed a Motorcycle Safety Resource Kit, and distributed it to all state highway safety offices, NHTSA regional offices, state motorcycle safety administrators, and national motorcycle organizations. The kit includes publications and public information and educational materials on the issues of motorcycle operator licensing, rider education, helmets and protective gear, impaired riding, and motorists

awareness. New and updated materials are distributed as they become available.

- o NHTSA developed a video program in late 1992, with the assistance of the Maryland State Police, to provide instructional information on various problems related to motorcycle helmets that comply with the Federal standard and those that do not comply.

- o NHTSA provides funding and support for public information and educational programs implemented by MSF, NASMSA, and the American Motorcyclist Association.

- o NHTSA answers about 100 requests each week from motorcyclists throughout the U.S.

NHTSA's WORK WITH MOTORCYCLE ORGANIZATIONS

- o NHTSA works closely, developing and promoting motorcycle safety programs with the national motorcycle organizations including The Motorcycle Safety Foundation (MSF), Motorcycle Riders Foundation (MRF), National Association of State Motorcycle Safety Administrators (NASMSA), and the American Motorcyclist Association (AMA).

- o NHTSA participates in conferences sponsored by the MRF, MSF, and NASMSA.

- o Fiscal year 1993 is the fourth year NHTSA has conducted a joint motorcycle safety program with the AMA.

- o NHTSA includes motorcycle organizations in addition to other highway safety organizations when developing motorcycle safety priorities and programs.

The subcommittee will now hear from a panel composed of the following individuals: Mr. James Arena, the Director of the Division of Highway Safety, Department of Law and Public Safety, State of New Jersey, and Chair of the National Association of Governors' Highway Safety Representatives; and Mr. Roy Kime, the Legislative Counsel, International Association of Chiefs of Police.

For purposes of introducing this panel, the Chair will recognize the gentleman from New Jersey, Mr. Menendez.

Mr. MENENDEZ. Thank you very much, Mr. Chairman. I want to join you in welcoming the entire panel, and particularly Mr. Arena, who, as the Director of the New Jersey Division of Highway Traffic Safety, has done an outstanding job, as is evidenced by New Jersey's declining fatality rates and the fact that New Jersey is well below the national average of fatality rates. I think that his work has been recognized by his colleagues, who have elected him the Chair of the National Association of Governors' Highway Safety Representatives. I look forward to listening to Mr. Arena's testimony here today, Mr. Chairman.

Mr. RAHALL. Gentlemen, you may proceed.

TESTIMONY OF JAMES A. ARENA, DIRECTOR, DIVISION OF HIGHWAY SAFETY, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY, AND CHAIR, NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES; AND ROY KIME, LEGISLATIVE COUNSEL, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ON BEHALF OF MAURY HANNIGAN, COMMISSIONER, CALIFORNIA HIGHWAY PATROL

Mr. ARENA. Thank you for your kind remarks, Mr. Menendez.

Mr. Chairman, my name is James Arena. I am the Governors' Representative for the State of New Jersey, and I appreciate the opportunity to appear before this committee today.

The National Association of Governors' Highway Safety Representatives, NAGHSR, is the national association of State highway safety offices. Under the 402 program in 1991, the surface transportation legislation continued and made few changes in the basic State Highway Safety Grant Program, also known as the section 402 State and Community Highway Safety Grant Programs. NAGHSR does not have a major concern about the changing list of 402 priorities. The States are already addressing nearly all of the priorities suggested by the authorizing legislation. As long as States continue to have the flexibility to address those priorities then changes to the list of priorities will not affect the way in which State highway safety agencies plan and program Federal highway safety funds.

The association is quite concerned about the requirement for States to collect additional highway safety data. NAGHSR strongly supports the goals of uniform highway safety data. We believe, however, that the data elements identified in ISTEA fail to address the systematic problem States have in collecting, reporting, and analyzing traffic records data. Mandating the collection of new data elements will not solve any of these problems. Rather, NAGHSR recommends that the traffic records problems must be addressed within a broader safety framework. Additionally, implementation of

CADRE and improvement of State traffic record systems will be quite costly. DOT has requested only \$123 million in appropriations for the 402 program in fiscal year 1994, despite the fact that \$143 million was authorized. NAGHSR urges the House Public Works Committee to convince its allies in the Appropriations Committee to fully fund the 402 program at its authorized level.

ISTEA created the new section 153 program which provides States with incentive grant funds if they adopt both mandatory motorcycle helmet laws and safety belt laws and if they satisfy specific usage requirements. Florida did not accept its fiscal year 1992 153 apportionment, and Tennessee accepted a partial apportionment because of an error in the minimum allocation program as authorized by ISTEA. The MA calculation is based on a State's allocation of National Highway System funds, Surface Transportation Program funds, grants for safety belts and motorcycle helmets, and funds for several other programs.

The net effect of this formula is that for every dollar a State accepts in section 153 safety belt and motorcycle helmet incentive grant funds, it loses \$1 in minimum allocation funds. As a result, there is no incentive for MA States to accept 153 grant funds. NAGHSR urges the House Public Works Committee to delete the Safety Belt and Motorcycle Grant Program from the MA formula and restore the incentive to the 153 program.

A second problem is that the 153 program inadvertently penalizes States that adopt a mandatory helmet or safety belt law in the middle of a fiscal year. NHTSA has interpreted this language to mean that a State must have a mandatory use law in effect for a full Federal fiscal year in order to become eligible for a second-year grant. NAGHSR believes that the 153 program was not intended to operate in this manner. We recommend that the statutory language be clarified and that NHTSA should be directed to change its interpretation of it.

A third concern is the statutory language regarding motorcycle helmet laws is unclear. A few State legislators have tried to circumvent the intent of the 153 program by adopting motorcycle helmet laws that allow secondary enforcement. NHTSA has not allowed States with secondary helmet laws to be eligible for 153 grants. NAGHSR strongly concurs with this interpretation and urges the House Public Works Committee to clarify the statutory language on this issue.

A fourth issue relates to funding of the 153 program. The 153 program should have been authorized at \$103 million over three years, which would be \$34.33 million per year, instead of the actual authorization level of \$65 million over a three-year period. Additionally, yearly appropriations have fallen far short of the authorized level. We urge the House Public Works Committee to work with the House Appropriations Committee and fund this important program at the authorized level in fiscal year 1994.

A final issue relates to penalty provisions of the 153 program. Bills have been introduced in the House and Senate which would delay the penalties or rescind them altogether. NAGHSR is strongly opposed to these proposals. NAGHSR firmly believes that the mandatory safety belt and motorcycle helmet use laws work. Further, NAGHSR believes the penalty provisions are a viable so-

lution to the problem of State inaction on occupant protection issues, and they do not cause the States to lose any transportation funds. We feel redirection is a far preferable approach than the more traditional sanctions. We also feel the penalty provisions have been very effective. We urge the House Public Works and Transportation provisions to retain the penalty portions of the 153 program as authorized.

Under ISTEA, the section 410 Drunk Driving Prevention Grant Program was focused on five of the most significant impaired-driving activities that States could undertake. The fiscal year 1993 DOT appropriations legislation made several other changes to the 410, all of which NAGHSR supported. We are pleased that the Administration has requested \$25 million for the 410 program in fiscal year 1994 and that funding will be an increase over last year's level. However, we do not feel that this amount will be enough, given the additional applicants to the program. NAGHSR urges, therefore, this committee to increase the authorization of the 410 program.

Under speed enforcement, excessive speed continues to be a major highway safety problem. NHTSA estimated that 34 percent of all fatal crashes in 1990 were speed-related and that 12 percent of all reported crashes are speed-related. One bill has been introduced in the House which would eliminate the compliance formula and allow the speed limit to be set at the 85th percentile speed of free-flowing traffic. Another would allow States to set speed limits. NAGHSR opposes both bills.

ISTEA requires the Secretary of Transportation to develop a new speed compliance formula and enforcement plan for 55-mile-an-hour and 65-mile-an-hour highways. States that are in non-compliance with the speed requirements will face redirection of highway construction funds. In January FHWA and NHTSA jointly issued a proposed change to the existing speed enforcement regulations. NAGHSR, in general, supports the proposal and believes the agencies made a good effort. We recommend, however, that the final formula include graduated sanctions. We also recommend that the penalty threshold should be raised somewhat. Finally, the association recommends that there should be one compliance ceiling for both 55-mile-an-hour and 65-mile-an-hour States.

NAGHSR believes that the SMS requirement is one of the most important in ISTEA. It creates a mechanism by which States and localities can incorporate safety concerns into planned highway improvements in a meaningful way. It will provide a framework for all States, regional and local agencies to work toward a single set of established safety goals and objectives. NAGHSR strongly believes the SMS must include all safety elements—the roadway, the vehicle, and the driver. NAGHSR also strongly believes that the SMS process must involve all State agencies with a safety interest. The State highway safety agency must be an equal and active participant in this process.

In all likelihood, States will comply with the 159 requirements, although most will submit a certification to opt out. In NAGHSR's view, the section 159 requirements, though well-intended, have not been successful. Part of the difficulty is that the 159 requirements were too specific. The other part of the problem is that NHTSA's

interpretation of the requirements is too stringent. Future highway safety legislative proposals could learn much from the lessons of the 159 program.

That concludes my remarks, Mr. Chairman.

Mr. KIME. Mr. Chairman, my name is Roy Kime. I'm the Legislative Counsel for the IACP. The Commissioner of the California Highway Patrol, Maury Hannigan, was due to testify today. Unfortunately, Commissioner Hannigan's father is gravely ill and is not expected to survive. We learned that he would be unable to attend yesterday afternoon and attempted to get several other directors of Highway Patrol, but couldn't on such short notice. So at the suggestion of the subcommittee staff and with the indulgence of the Chairman, I'll give Commissioner Hannigan's testimony.

Maury Hannigan is the General Chairman of the Division of State and Provincial Police, or S&P, representing 49 of the 50 States and members from Canadian provinces. S&P is a part of the International Association of Chiefs of Police. We appreciate the opportunity to address your distinguished committee.

The testimony will focus on several highway safety programs in the Intermodal Surface Transportation Efficiency Act, or ISTEA. I am here representing the interests and concerns of law enforcement agencies throughout the United States, as well as representing the State of California.

Law enforcement agencies throughout the Nation are dedicated to public safety and service. At the State level, law enforcement appreciated the emphasis in ISTEA on transportation safety. Your committee is to be commended for directing limited national resources to important traffic safety programs. As at the national level, each of our States must also focus our limited resources to best improve traffic safety, given the problems in our individual States. Our constituents require that our funding, which is increasingly limited, be spent efficiently and effectively.

Driving under the influence, DUI, remains the most common reason why citizens of this country die on our Nation's highways. The recent death of Senator Thurmond's daughter by a DUI driver is an unpleasant personal reminder of the continuing tragedy of mixing drinking with driving. In ISTEA you realized an important mechanism—incentives—for encouraging States to work on this problem. We strongly support the use of incentives as a way of efficiently inducing improvements in traffic safety.

In ISTEA the States are given a fiscal incentive to implement lower blood alcohol thresholds, immediate license suspensions for drinking drivers and other DUI-related activities. The fiscal incentives provide a powerful reason to implement DUI programs, but we are pleased that they do not force Federal solutions on States when State leaders decide to pursue a different set of solutions. We think your ISTEA DUI program is an excellent conceptual model of a cooperative Federal-State relationship.

I hope my message is clear. IACP, along with the State of California, supports a positive, flexible, incentive-based approach to improving traffic safety.

Now I would like to turn to a program that could be improved by using incentives. The International Association of Chiefs of Police has officially opposed the speed limit sanction process since

1980, when the membership passed the first of five formal resolutions opposing those sanctions. Now, as then, we are concerned about the potential for perverse consequences—that good intentions are not enough to assure safety improvements.

Prior to ISTEA, the perverse potential of speed sanctions was obvious. It was well-documented in a report that Congress commissioned from the National Research Council. Under that sanction process, States could lose highway funding when major violation rates were too high. Of course, with fewer highway funds, fewer highway projects could be completed. Many of these projects were safety-related, and, thus, speed sanctions compromised motor safety directly and indirectly.

Under ISTEA, the U.S. Department of Transportation has been given considerable latitude to develop a new speed limit sanction process. As you may know, their proposed rulemaking has been circulated for comments. The IACP encouraged the Department to streamline this burdensome monitoring and sanction process, and we respectfully request your support in this endeavor. We also request your assistance in generally deemphasizing speed limit sanctions, because they are ineffective, often inequitable, and wasteful of tax revenues.

First of all, the history of speed limit sanctions is a 14-year chronicle of antagonism and gamesmanship between State and Federal governments. Sanctions have been mandated since 1978, and in recent years, three out of four States would have been out of compliance except for what the National Research Council called an "arbitrary statistical adjustment process." The new regulations also include a statistical adjustment factor that will continue the gamesmanship.

The antagonism also is likely to continue because of frustrations caused by wasted funding that could be better spent on safety highway projects. Some of the frustration at the State level is a result of wasted State effort on maintenance of numerous speed monitoring sites, frequent data collection, statistical manipulation, and reporting of detailed numbers. All this is being done exclusively for the purpose of monitoring compliance. It contributes nothing to improved safety. If the Federal effort is included, the wasted funds are even greater.

These funds and personal time could better be used in programs that have direct safety benefits. In an era of limited resources, this misallocation of resources is difficult to accept. Rather than spend Federal and State funds for unproductive administrative activities exclusively focused on 55- and 65-mile-an-hour speed limits, we believe those funds should be redirected toward public education on speed issues generally, especially programs targeted at motorists who travel at speeds unsafe for conditions.

I think we would be enthusiastic to support repeal of the speed monitoring process and use those funds to convince people to drive more prudently in residential neighborhoods, business districts, and other surface streets. The safety benefits are likely to be substantial, because these are the kinds of roads that have much higher death rates than interstates and other highways.

A moment ago I expressed concern about gamesmanship continuing under the new sanction process. In addition to the continuation

of an adjustment factor for speed statistics, the organizational mismatch also continues. The speed sanction requires that funds be transferred from construction projects involving the State Department of Transportation to activities involving the State Highway Patrol. In this time of increasingly limited resources, this sanction process of winners and losers pits the agencies against one another when the need is greatest for cooperation. Even more importantly, it once again shifts the focus of State efforts away from highway safety.

In addition to this organizational conflict, the effectiveness of speed sanctions is an issue. No Federal or State study has ever proposed that Federal sanctions have been effective in improving safety. In fact, a 1988 report of the General Accounting Office came to the opposite conclusion. With the new sanctions, the intentions are good, but the effectiveness remains questionable.

The proposed sanctions would reduce construction funds in a State. This means lost construction jobs and delays in implementing safety programs at a time when many States need an economic boost. In California's case, our Department of Transportation estimates about \$2 million over the next five years in additional costs just for required new speed monitoring sites. These funds will have to be diverted from other construction and safety projects. Then, if California is sanctioned, the loss of construction funds will be more than five times greater, and the DOT estimates that the annual sanction could result in a loss of 200 California jobs.

Under ISTEA speed monitoring and processing sanctions, the financial view is bleak. The States are left with high operating costs, potential sanctions for construction funding, and lost jobs. We believe the individual States are in a better position to determine where funding will have the greatest payoff and the appropriate balance of efforts to afford each State's goal. States are responsible to local constituencies for expenditures of tax dollars and should be responsible for setting their own priorities.

Speed sanctions have been tried a long time and have not proved effective. We ask your assistance in shifting the emphasis from sanctions to incentives and putting more Federal dollars and State funds into activities that really have safety payoffs.

Thank you.

Mr. RAHALL. Thank you, gentlemen, for your testimony.

Before proceeding with questions, I would like to ask if you'd yield for a moment so that we may hear from one of our colleagues who was to have been on an earlier panel, but could not be here at that time. He is our colleague from the State of Tennessee, Representative Jim Cooper, who has done quite a bit of work on the safety helmet aspect of ISTEA, and it's indeed our honor to welcome our fine colleague from Tennessee to the subcommittee at this particular time.

TESTIMONY OF HON. JIM COOPER, A REPRESENTATIVE IN CONGRESS FROM TENNESSEE

Mr. COOPER. Thank you very much, Mr. Chairman, for your kind words. I appreciate your allowing me this opportunity to testify, and I appreciate also the presence of the ranking Member.

As you know, section 153 of the ISTEA bill is one of the most important public health measures that this Congress has considered in recent years, and I feel it would be a shame—in fact, it would be tragic—if Congress were to weaken that provision. When we wrote that provision of the bill, we tried to work extensively with the States to make sure that this was not a Federal mandate in the traditional use of that phrase.

A Federal mandate usually restricts State flexibility and usually takes a punitive attitude toward the States. This section 153 does not take one penny of money away from the States. It just forces redirection of the money toward other safety programs if a State, in its own wisdom, chooses not to enact a seat belt or motorcycle helmet law. We give States complete flexibility to choose the method of safety program that they prefer, but the bottom line is saving lives—saving innocent lives, preventing needless death, head injury, maiming, other preventable forms of death and injury that are the tragic consequence of unbelted, unhelmeted passengers and riders in our vehicles across our Nation.

This is a very important opportunity for this Congress to show real leadership, to preserve the proud provision in the ISTEA bill, to encourage our States to do the right thing, and several States have taken up the call of the ISTEA bill. Maryland, Nebraska, North Dakota, Rhode Island, West Virginia are some of the States that have taken positive steps in the right direction since passage of section 153. Several States had already acted during consideration of the ISTEA bill—States like California, Arkansas, Alabama, Delaware.

It's important that we continue this progress in the right direction. It would be the wrong message to the States to say that this Congress would not stand up for sensible public health, safe traffic measures, like encouraging seat belt use and motorcycle helmets.

I appreciate the patience of the Chair in allowing me this opportunity to testify. I'm confident that this is the majority sentiment both of the American people and of this Congress. I hope that we'll be able to preserve that important section of the ISTEA bill.

I know that the Chair's time is precious. I will not belabor the points I would like to make, but I appreciate your giving me an opportunity to make these points before you today.

Mr. RAHALL. Thank you very much, Jim, for your testimony. I know that we've talked personally about this on a number of different occasions, and I certainly appreciate your dedication and support for this section 153. It is something we're still trying to sort out and work out any kinks that may exist or see what problems need to be resolved with it. But your support of it and your work has not gone unnoticed by this subcommittee or the full committee.

Mr. COOPER. Thank you. I appreciate that.

Mr. RAHALL. The gentleman from Wisconsin?

Mr. PETRI. Thank you for coming. I wonder if you could give your reaction to the suggestion some have made that we shift the focus in 153 to a means to get to the bottom line which is saving lives. Let's focus on that so that the requirement would be to have a level or a lowering of the fatalities per motorcycle miles driven rather

than a particular means of getting to that lower level. Do you see what I'm saying?

There has been a lot of testimony that States with helmets laws have higher fatality rates than States without. Rather than arguing about it, why don't we just focus on lower fatality rates, and if the way to get it is helmet laws, people will do it. If there's some other way to get it, education, however they want to achieve that goal, great. So what's your reaction to us focusing on the bottom line of saving lives explicitly rather than a means to get to the bottom line?

Mr. COOPER. With all due respect to the gentleman from Wisconsin, the intention of section 153 was to enable the States to pick the most effective way of achieving the means. If they know of a way that's more effective than a helmet law, more power to them. We want to encourage them to be searching out actively those other effective means, though, if they exist. Every objective scientific study I've seen indicates that an all-rider helmet law is about the most effective way to achieve the goal. But if there's a more effective way, let's find it, and let's make sure that the States are focusing on that job of preserving public health and safety on our Nation's highways.

It's also a gigantic taxpayer issue, because as important as the individual freedom issue is, taxpayers also have rights as well, and when you do have a debilitating head injury, when you are on life support for an extended period of time, you usually become a burden on the State, and you force your fellow taxpayers to pay your hospital bills, your nursing home bills, sometimes for decades.

It's very important that we balance these individual and public responsibilities so that we get a cost-effective solution to this very important public health problem. The leading cause of death for Americans between ages 1 and 44 is traffic injuries. We can and must do something about this. We do not dictate to the States. We just encourage them to choose what we think is the most effective means. But if they know a more effective means of lowering fatalities, lowering injury rates, of saving taxpayer dollars, then more power to them. We just keep their attention focused on the issue. We do not allow them to ignore it, as some of the other proposals, I think, would allow them to do.

Mr. PETRI. Thank you very much.

Mr. RAHALL. The gentleman from Georgia?

[No response.]

Mr. RAHALL. The gentleman from New Jersey?

[No response.]

Mr. RAHALL. Jim, thank you very much.

Mr. COOPER. Thank you, Mr. Chairman. You're very kind.

MR. ARENA; MR. KIME, RESUMED

Mr. RAHALL. If I may ask the previous panel if they'd return to the table, please. Thank you for your patience.

Mr. Arena, let me ask you, if there were no requirement for data collection in ISTE, what impetus would the States have to overcome the systematic problems that are associated with State data collection procedures?

Mr. ARENA. Mr. Chairman, I believe they would have concerns about doing that, but I think ISTEA certainly makes the point that comprehensive data is essential, and I think the fact that the entire transportation and safety environment, as well as traffic accident environment, continues to change over the years, that many data systems in the country—and I would bet that there's not a State in the Nation that couldn't do better with data—really can't put together programs in a most cost-effective and efficient way. I think that the data requirement in ISTEA is critical, and it should stay, if not be reinforced.

Mr. RAHALL. Do you think the so-called "hammer" provision of section 153, the transferring of funds from highway construction programs to highway safety programs, that presents a conflict between State agencies?

Mr. ARENA. It certainly does, but I'm not sure that that conflict is a bad one. If you compare the amount of safety funds to the construction funds, there is basically no comparison. Less than one-tenth of 1 percent of safety monies are allocated compared to the construction monies. When one tries to develop a safe transportation system, you can engineer and build all kinds of highways and systems, but until the cars and the drivers take to the roadways, you don't have a safety record. There's always money to pay for these incidents and events after they occur, but there seems to be a desperate need to provide monies to prevent these incidents from happening.

So the redirection certainly gets the attention of the States, and in some cases it causes some conflict, but I think it makes the point of this committee that safety is certainly important.

Mr. RAHALL. How do you respond to the opponents of section 153 who say the penalty enforcement provisions are a violation of States' rights?

Mr. ARENA. That's an interesting issue, Mr. Chairman. I'm not sure how I respond to that. I think that the penalties certainly get attention, but I would be more supportive, as would the NAGHSR members, to incentives. Because we can't really separate any one issue from the other when we talk about a comprehensive traffic safety program. I'd be happy to speak to drunk driving and the motorcycle helmets and many of the other questions that have come up today, but incentives allow a comprehensive approach to safety programs.

The 402 is the basic building foundation block for the State safety programs. It's very difficult for one to strategically plan past one year without some basic monies, and then certainly the incentive monies give the States the opportunity to respond to those incentives.

Mr. RAHALL. Mr. Kime, you state that no Federal or State study has ever proposed that Federal sanctions have been effective in improving safety. Is that correct? Did I hear you correct?

Mr. KIME. Yes, sir.

Mr. RAHALL. Would you not agree that the national minimum drinking age law, which included sanctions, has been effective in reducing alcohol-related deaths among teenagers since this was passed?

Mr. KIME. Well, it may have been, but the Commissioner had been talking specifically about speed sanctions.

Mr. RAHALL. So when you state, "No Federal or State study has ever proposed that Federal sanctions have been effective in improving safety," you're talking about speed sanctions?

Mr. KIME. Just speed sanctions, yes, sir.

Mr. RAHALL. I see. All right. The National Highway Traffic Safety Administration tells us that speed is a factor in a third of all highway fatalities. Do you believe that this problem can be addressed by public education programs alone?

Mr. KIME. I do. I think the Commissioner was concerned in his testimony that funds were being used to keep statistical records for the speed sanctions. They've been doing it for 20 years, almost 20 years, and very little of those funds have been diverted. His position was that if those funds were spent on public education, you'd get a bigger bang for your buck.

Mr. RAHALL. In terms of additional costs for new speed-monitoring devices, to what do you attribute these higher costs?

Mr. KIME. Some States have to establish additional monitoring sites.

Mr. RAHALL. So they have to buy additional devices, then?

Mr. KIME. Yes, and man the monitoring stations.

Mr. RAHALL. And do what? I'm sorry, I missed that last statement.

Mr. KIME. And man those stations.

Mr. RAHALL. Isn't it possible to redistribute the existing devices to areas where you will need to focus your enforcement efforts under the new formula?

Mr. KIME. Well, in the opinion of the California Department of Transportation, they felt they were going to need more devices and more activities than they could redistribute. I can specifically find out what their position on that is and why and submit that, if you would like.

Mr. RAHALL. Yes. We would like to receive that, if you would.

Mr. ARENA. If I may, Mr. Chairman, under the new speed compliance program, many of the monitoring locations are constructed into the roadway. The monitoring systems are put on the side of the roadway, and they can change the components around the State. But I suspect that there is a desire for a greater sampling to get a sense of what the speeds really are around the States, so that there would be some construction costs associated with it.

I think the whole issue of speed compliance and incentives is a serious one that, clearly, speed is a problem, and while there may be some room for improvement in the monitoring and compliance process, I think that speed should remain a serious issue.

If I can go back one question to education as opposed to enforcement, education is very important, and we support that. We in New Jersey have just implemented a motorcycle safety education course and will have statewide training sites that are supported by an increase in the motorcycle registration fee. We also have a mandatory motorcycle helmet law in New Jersey that has been very successful, and we would be hard-pressed to try and find some reasons why that should not continue. As a matter of fact, we are so convinced that last year New Jersey passed a bicycle helmet law

for those under the age of 14, and last year we saw a 60 percent reduction in bicycle fatalities for the clientele under the age of 14.

The education approach was taken in the early 1980s to drunk driving, and the truth is that many drunks and many problem drinkers don't normally watch television or read pamphlets, and if they do, it is the disease of denial. Clearly, it was the DWI enforcement program that brought people before the courts and put them in countermeasure programs for both education and counseling, and for that reason there's been a significant improvement in DWIs. I believe nationally there was a reduction of 13 percent of drunk driving accidents for people under the age of 21. In New Jersey we saw an 86 percent reduction in drunk driving accidents for the people under 21. So that's been a very successful program.

Mr. RAHALL. Thank you.

Mr. Petri?

Mr. PETRI. Thank you.

In your testimony, Mr. Kime, you talked somewhat about shifting mandates or relieving mandates because of the cost involved as opposed to any benefits that you sensed were being incurred. What is your reaction to these various public safety programs involving the use of our highways, whether it's motorcycle helmets or seat belts or drunk driving and so on, focusing on the bottom line or using some sort of a measure of what the fatality rates are in States, and if a State's doing a good job, let them go about doing it however they want to rather than us focusing on an intermediate line, such as a means to that goal?

Although, isn't it true that in lowering the speed limit, the goal at the time was energy efficiency, in part? I think at least that was the rationale. There may have been safety considerations in the back of people's minds, but at the time we went to 55 on the highway, we were having what we were told was a national energy crisis, and a way of saving fuel was to make people drive trucks and cars more slowly. If that's still our goal, maybe we should move them into motorcycles, which use even less fuel. I guess you can't transport as many goods that way, however.

But I'd like some reaction, if we could, to this notion that mandating a particular means of getting to the goal is often counterproductive and inefficient in many States or in many situations, and it's better to concentrate on ways or allow people freedom to devise the best way to get to a goal we all agree on, which is safer highways, fewer fatalities, and less cost to the people from injuries that result from non-safe use of the highways.

Mr. KIME. I'm sure Commissioner Hannigan would agree with several of the points that were made on the States' rights types of issues and support giving the latitude to the States to accomplish what they deem to be in the best interest of the public safety of their own citizens and not be forced into activities that were established here in Washington. I think kind of the same arguments that were used earlier on the helmets and seat belt laws can be extended to speed limit sanctions. I don't think we're saying that excessive speed is not a problem, but just that it's wasteful to use limited dollars to attempt to control sanctions if in fact those sanctions are very rarely ever applied or used.

Mr. ARENA. Mr. Petri, in response to your question, yes, it is far more effective to have a comprehensive traffic safety program that addresses the bottom line and is designed and put together by a State highway safety agency. However, certainly at the national level, some incentives to implement those measures that are proven to be effective—i.e., safety belt use, motorcycle helmet use, speed reduction, drunk driving—that's, I think, where the incentives can be brought into play.

How the penalties come into play I think is certainly a task that this committee is going to have to address. But once the incentives start to out-balance the basic money, then State highway safety agencies are required to draw resources from one important area and place them somewhere else. And when too many carrots are dangling from too many sticks, there is no basic money to do strategic planning, which is critical in these tough fiscal times with the health care costs escalating at the rate that they are.

Mr. PETRI. We've had great luck these last two years in our State of Wisconsin in reducing drunk driving. In a lot of places in the country, they've turned the corner there. Our State Tavern League decided, rather than fighting against mandates or laws, to come up with a program of its own, which was backed by the State, of encouraging designated drivers, and providing free cab service home. Leave the car at the establishment if there's some question as to whether it's safe to go back on the road and so on. This seems to have made psychological changes. So people are still drinking, but they're not drinking and driving. From the point of view of highway safety, that's made a great improvement.

Mr. ARENA. We're real pleased with the work that Wisconsin has done. Dr. David Manning, who is your highway safety director, is a very active person nationally, and he brings a lot of Wisconsin's good experiences to the national table. So we thank you for that.

Mr. RAHALL. Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Arena, the issue of mandatory helmets is new to me to some extent, so I would like to frame the context of this debate. Is there any issue, from your position as Chair of the Governors' Safety Representatives, that helmets save lives?

Mr. ARENA. No, not in my opinion and not in the literature and the data that I've been reviewing. There is no conflict or there's no questions that are unanswered. Last week I was the recipient of an award from the New Jersey Head Injury Association. We had nearly 200 people in a room, many of whom were recovering from permanent brain injuries and many of whom never felt they would have that particular problem.

The trouble is that we live in a democratic society where Constitutional rights are extremely important, but if you consider the environment in which motorcycle riders ride, it is not the same comfort and safety that is afforded by the inside of a motor vehicle. There are no such things as a fender-bender on motorcycles. If one tumbles off of a motorcycle, you are at extremely high risk for injury, and those injuries are generally very debilitating and certainly very serious. Head injury is clearly the one that causes the most problems and is most typical type of injury for motorcycle riders.

Mr. MENENDEZ. Is there any question, then—and the answer would seem to flow from your answer to my previous question—that it reduces traumatic head injuries?

Mr. ARENA. That is clearly true, Mr. Menendez. In fact, many of the head injury associations across the country, as well as epileptic foundations, have run out of money, and with the life expectancy of individuals increasing each year, that's driving up the health care costs at a rate of approximately 20 percent per year. We're seeing a number of motorcycle drivers who don't have insurance or there's a problem with insurance, and if they have improperly worn helmets or helmets that are not approved, that is a serious burden to society to pay for that for the rest of their lives.

Mr. MENENDEZ. Is there any evidence to support the claims, that I believe were made by the cyclists, that mandated helmets would in fact create non-fatal injuries?

Mr. ARENA. I'm sorry, could you repeat that?

Mr. MENENDEZ. My understanding is that one of the arguments raised against the mandating of helmets is that it would increase the number of non-fatal injuries. I assume in terms in terms peripheral perception or limitations in any way in terms of of the cyclist, by virtue of having to wear a helmet. Maybe we've solved fatal injuries, but their suggestion is that we've increased non-fatal injuries.

Mr. ARENA. I'm not sure that I can agree with that. I'd have to look at the numbers. But we have the same dilemma with seat belts. We reduce fatalities, but also what we have are what we call the cascading effect. A fatal injury is a critical injury, the critical injuries are only serious injuries, and the serious injuries are minor injuries. I suspect that there's a lot of inferential information I'm reading from some of the people who speak to the issue of helmets, and that is that "I wear my helmet, but I'd like to make that choice myself." I don't think that it would certainly increase debilitating injuries or serious injuries. I don't think that's the case.

Mr. MENENDEZ. If I may, just one different line of questioning to follow a question the Chairman asked you about data collection. I noticed page 2 of your statement seems, to me, different than your answer to the Chairman, and I'm trying to see where is your quorum with the issue of data collection. It would seem that it's eminently important to make long-term policy decisions based on the right source of data, but on page 2 you talk in several paragraphs about your concern for requiring States to collect the data. Where is the rub?

Mr. ARENA. I think the rub is mandating data elements, specific pieces of elements, specific pieces of data, is probably a structured system or situation when in fact that data—we don't really know what our total data needs are. What we think we need today will change by next year, and certainly under ISTEA the synergistic effect of having all safety agencies work together would develop the type of data that's needed.

A classic example: We are undergoing a traffic record study in the State of New Jersey, and each meeting leads to more and more pieces of information that we need. In one North Jersey county we found about a month ago that there are a few individuals that were experiencing several minor injury accidents in one day in different

cities around the North Jersey area. They were all going to the same attorney, going to the same doctors for treatment, and, clearly, it has all appearances of insurance fraud. Now the Division of Consumer Affairs has said, "We would like to follow that up," as well as the insurance folks, and heretofore they weren't at our table talking about traffic accident records.

The whole issue of health care, being able to link the effective trauma and hospital care to victims of accidents and injury, is one way of understanding which systems and which countermeasures are most effective in reducing the injury and the cost of injury. We have not yet linked the health care data to the traffic accident records data. So, again, as we learn more and more about data needs, it is a critical issue that has to be included.

Mr. MENENDEZ. One final question. You say that the implementation of CADRE is quite costly, and you talk about what it may generally cost the States. Do you have a figure of what you project it will cost the States?

Mr. ARENA. In the sampling that we took, the preliminary analysis says between \$1 million and \$2 million to make some minor changes in the police accident report form, while some major changes would cost \$3 million to \$5 million. That's certainly averaging across the country, and there are States that would have a greater cost and some that would have less. Because if you're going to change an accident report form, you've got to go to new print, you've got to go to a new design, you've got to go to retraining the police officers, and I'm just not sure that that's worth it for five or 10 data elements.

Certainly, there are the basic data elements that one needs to begin to analyze how effective our traffic safety programs are, but it's certainly a long way from the desired system.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from California, Mr. Hamburg?

Mr. HAMBURG. Thank you, Mr. Chairman.

I'm sorry that I missed most of your first testimony. I just want to ask a couple of questions about this idea of the helmet laws. How successful are education efforts in terms of non-mandated encouragement of use of helmets? Are more and more of our motorcycle riders using helmets voluntarily because of the education programs that we have in place?

Mr. ARENA. I don't know that I—I would have to answer yes to the last part of your question. As we implemented the motorcycle safety education course in the State of New Jersey, one of the issues that we weren't completely together on was in fact the use of helmets, and as push came to shove, we required that a certain component of the program address helmets and helmet use. So education without helmet information may not be particularly useful. With it, yes, it is useful.

But we're going to be several years before we end up addressing all the motorcycle riders in the State of New Jersey, and clearly education is one of the most difficult things to prove whether it's been effective or not. We have D.A.R.E. in the schools. We have alcohol prevention in the schools. I'm not sure how we measure whether that's effective or not. So if you take just one element or

one component, I don't think that education is a substitute for helmet mandatory use.

Mr. HAMBURG. Well, it may not be a substitute for mandatory use, but it sure is a much more popular approach in my congressional district, where there's a heck of a lot of motorcycle riders who feel that there's a lot of risks that people take in a democratic society and choose to take. A lot of those risks are, unfortunately, sort of encouraged by Government, if not let go by Government. I mean, I dare say that a lot more people die from tobacco-related illness than die from accidents on motorcycles. I mean, we could go through all the risks that people are allowed to take and, in some cases, encouraged to take by our society.

So I guess, you know, I'm very interested in how we can get more people using helmets, because I understand that it's extremely dangerous, and I certainly wouldn't want any family member or friend or anyone I know to ride a motorcycle without a helmet. But at the same time, I think to single out a particular group and mandate that they conduct themselves in a certain way is a tough step for me to take.

Mr. ARENA. Well, I certainly don't envy you in your mission here, but that particular group puts themselves at risk by the type of activity they choose to do, and not only at risk within their own self-control, but rather at risk with the rest of the driving population out there, other car drivers. In New Jersey last year we arrested 48,000 drunk drivers. You could have the best motorcycle rider in the world being the most careful rider in the world, and if he becomes the victim of another person's actions, then who bears the burden of that?

In your mission to find your final position on this issue, I would certainly encourage you to talk to the head injury folks, the trauma center folks, the epilepsy foundation folks, and then some of the family members of victims of serious and permanent brain injury. It certainly brings a very sobering set of circumstances that one must deal with. So I don't envy you, but if we can be of any help, the NAGHSR organization in Washington or your State highway safety office will be able to put some things on the table that will help you come to a responsible decision.

Mr. HAMBURG. Thank you.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, gentlemen.

Our next panel is composed of the following individuals, Mr. Jim Bensberg, Washington Representative, American Motorcyclist Association; Mr. Wayne T. Curtin, Vice President, Government Relations, Motorcycle Riders Foundation, Inc.; and Mr. Paul Rafter, San Jose Local, ABATE of California.

Gentlemen, we welcome you to the subcommittee. We do have your prepared testimony, and it will be made a part of the record as if actually read, and you're encouraged to summarize.

TESTIMONY OF JIM BENSBERG, WASHINGTON REPRESENTATIVE, AMERICAN MOTORCYCLIST ASSOCIATION; WAYNE T. CURTIN, VICE PRESIDENT, GOVERNMENT RELATIONS, MOTORCYCLE RIDERS FOUNDATION, INC.; AND PAUL RAFTER, SAN JOSE LOCAL, ABATE OF CALIFORNIA

Mr. BENSBERG. Thank you, Mr. Chairman. My name is Jim Bensberg, and on behalf of the 200,000 members of the American Motorcyclist Association nationwide, I thank you for this opportunity to testify here today.

I think it's safe to say that in the area of highway safety, there are no more concerned individuals or organizations, which are represented by the individuals that you see before you today, than the AMA and the Motorcycle Riders Foundation and all the various affiliated clubs and associations.

In regard to the Intermodal Surface Transportation Efficiency Act of 1991, I can tell you that there are several aspects that our members very much agree with. Chief among them are the uniform guidelines issued for section 402 funding. We can think of no better way to address the issue of motorcycle safety than attempting to influence behavior to avoid accidents, and that's what the uniform guideline to the States does. It requires the States to develop a guideline to reduce injuries and deaths resulting from accidents involving motor vehicles and motorcycles.

Secondly, I would tell you that we're very much pleased to tell you that the effect of the language concerning use of HOV lanes—that is, high occupancy vehicle lanes—by motorcycles has been very effective. To our knowledge, there are no States now in the United States which ban motorcycle travel on HOV lanes. Prior to the passage of ISTEA, that was not the case, and we believe that motorcycle commuters have benefitted greatly not only from the convenience of using HOV lanes, but the added safety benefits.

I would also tell you that in the spirit of intermodalism, we encourage the use of motorcycles as an alternative transportation vehicle, because an efficient system is a safe system.

Our members have long opposed efforts by the States, aided by the Federal Government, to impose mandatory helmet laws for riders of all ages. In our view, the debate is not whether helmet use is desirable. Clearly, the advantages of helmet use far outweigh any possible disadvantages. Rather, our members believe very strongly that helmet use should remain an individual decision. You've heard testimony today from several witnesses who tell you that this is not punitive legislation. Our members take quite a different view. They don't believe that they benefit from this legislation, and, therefore, they do believe that it is punitive and aimed toward a very small segment of the motoring public.

As was referred to earlier, there is no definition in ISTEA of a safety helmet, and while we're aware that there is an FMVSS-218 standard for helmets, there still continues to be a fair amount of vagueness and confusion among State officials and motorcyclists as to which helmets pass. We're not aware of any federally approved list of helmets, much like the child safety seats have.

We're also concerned, as was discussed earlier, about the primary enforcement of helmet laws as opposed to the secondary enforcement of seat belt laws. You will note in California, for example,

that not only is there a difference in the enforcement standard, there's also a great difference in the fine levied for the respective violations.

So in this regard, Mr. Chairman, with your indulgence, we would respectfully urge that the Public Works and Transportation Committee and the Surface Transportation Subcommittee, at the very earliest possible time in this 103rd Congress, give due consideration to Representative Snowe's H.R. 799, which would repeal the Federal sanctions on States which have failed thus far to pass both helmet and seat belt legislation. I note in my testimony that there are 29 States, to our knowledge, which are now out of compliance and will be as of September 30th of this year, and I think that sends a pretty clear signal to the Congress that this legislation is not popular among legislators at the State House.

We've heard some testimony in the past—it's certainly not new—that says that motorcycle accident victims are a so-called social burden because they end up in hospitals, oftentimes as a result of others' carelessness or negligence, and that when they run out of insurance or have no insurance, which is a problem that afflicts many more Americans than just the motorcycle population, that they end up being a drain on our taxpayer and insurance dollars.

But the often-quoted Harborview Study I think has been sufficiently discredited over the years in that while it speaks to the immediate issue of people not having insurance when they're injured in motorcycle accidents, it does not tell you that these folks are any different than anyone else in society. We're taxpayers, too, Mr. Chairman, all of us who ride motorcycles, and we're very concerned about public safety and health care issues, but we don't believe we're any more responsible for our Nation's health care problems than any other group, and our declining fatality numbers in the traffic safety arena would point that out.

A similar study done in North Carolina, however, did point out that injured motorcyclists were just as likely to be privately insured as other motorists. That information is available for the full record.

Now, earlier we heard quoted a GAO report, and I would just quote another GAO report that says that the practical effects of the language in ISTEA have perhaps been at odds with making roads safer for motorists. They quote in the report, "The Act's connection between safety belts and motorcycle helmets may limit States' financial incentives to improve safety belt efforts. More than 10 times the number of people have died annually in car and light truck crashes, and it would not appear productive to condition State incentives for safety belt efforts on what States may be able to do with motorcycle helmets."

Having said all that, Mr. Chairman, the good news is, as most people are aware, motorcycle fatalities are way down. They're at an historic all-time low, 20-year low, a 45 percent drop since the high water mark of 1980, and according to the Insurance Institute for Highway Safety, motorcyclist deaths as a percent of all motor vehicle deaths have dropped 40 percent from 1981 to 1991. So I think it shows that we are doing many things right, and all this is not conditioned upon States which have helmet laws.

You will note that motorcyclists often cite the so-called Hurt Report, a report that was commissioned in the late 1970s by the National Highway Traffic Safety Administration and was conducted by Professor Harry Hurt at the University of Southern California, in which they conducted over 900 in-depth accident reports to determine the causes and the consequences of motorcycle accidents. We would respectfully suggest once again, Mr. Chairman, that this is an area that, after 14 years, probably needs to be updated, and we would encourage perhaps shifting some of the incentive grant money to the States to pass helmet laws to conduct a nationwide research project to determine the causes of motorcycle accidents. We much prefer to prevent the accident rather than mitigate the damage that happens afterward.

Finally, I would tell you that while we realize it's not within the purview of this committee, we would greatly appreciate the leadership of the Members of this committee in urging your colleagues in the House Post Office and Civil Service Committee to designate May annually as Motorcycle Awareness Month. It is recognized across the Nation by many States, and we believe it's important for Congress to help us in this effort.

Let me just summarize, Mr. Chairman, by saying that since 1966 our members have counted on us to advance their interests in the area of motorcycle safety, and they continue to tell us that they wish to remain free from either Federal or State sanctions which require States to pass helmet laws. The "problem", if you will, of motorcycle safety, as evidenced by this testimony, is decreasing rather than increasing, and so, therefore, we would once again urge you to give H.R. 799 a full and complete hearing at your earliest possible convenience and to continue research by reallocating Federal funds for motorcycle accident research and causes.

Thank you very much.

Mr. CURTIN. Thank you, Mr. Chairman, and Members of the subcommittee. My name is Wayne Curtin, and I'm the Vice President of Government Relations for the Motorcycle Riders Foundation. We appreciate this opportunity to testify on the impact of ISTEA on motorcyclists and wanted to give you a little of background about the organization.

We're a national motorcyclist's rights organization which is supported by and represents the interests of individual members, small businesses marketing to motorcyclists, and State motorcyclist's rights organizations throughout the country, and the combined membership of these organizations is in excess of 150,000 motorcyclists.

First, I'd like to thank the committee for the positive aspects of ISTEA in relation to motorcycling, especially the opening up of HOV lanes, which we think creates a much safer and a much more efficient manner of commuting for motorcyclists. We also greatly appreciate motorcycle safety being designated as a priority highway safety program within the National Highway Traffic Safety Administration.

Although the Motorcycle Riders Foundation focuses mainly on road riding issues, we were very supportive of the Symms National Recreation Trails Act being included in ISTEA. We feel that off-road motorcyclists, by buying gasoline and oil, pay into the trust

fund, and we would encourage your supporting the Appropriations Committee fully funding that act.

However, our major concern within ISTEA has been the provisions dealing with mandating motorcycle helmet use. The first program, the Incentive Grant Program—we acknowledge that incentive grants are an appropriate and probably a constructive way for Congress to encourage States to take certain actions in safety programs, but I would like to address some of what Congressman Petri was talking about earlier that we feel would be a more effective way of implementing incentive grants. Rather than mandating specific laws be set, instead provide or set goals that States could achieve and, if they achieve, that qualify for additional grants, like lowering accident rates and lowering fatality rates on a consistent basis.

Our primary objection to what was section 1031 of ISTEA has to deal with the penalty provision. Earlier Congressman Cooper indicated that this was a non-punitive section, and I would like to ask the question, if it's non-punitive, why is it titled "penalties"? I always thought penalties were a punitive action.

Also, though it does provide for transferring of the funds to safety programs, it provides that those funds be transferred to a very limited area in which most States could not responsibly spend that amount of money and could not really address all of the safety needs that they wanted. When ISTEA was in process, the Senate version of the bill involved a much broader allocation of where the money could be spent. It could have been spent on highway railroad crossings, it could have been spent on highway safety improvements in the construction area, and all of that was stripped out in conference committee and focused on this very small area. So we do consider that section to be punitive.

But who we think is really being penalized in this endeavor are the citizens of the States. The citizens, the motorcyclists, of many States have gotten involved in the political process in their States, have gone and worked their State legislatures and convinced their legislators they did not need a helmet law in their State. Local people getting involved in local government. What this Federal mandate is doing is driving a wedge between and putting a barrier between the citizens of the States and their State legislators. We think that's bad public policy, that Washington should not be discouraging people from being involved in local and State politics.

We also feel that the State legislature is a more appropriate place for this issue to be dealt with. Not only because it's where highway safety laws have normally been dealt with, but also especially for us as motorcyclists, a lot of issues get raised when you talk about mandatory helmet laws, issues like liberty and freedom, pursuit of happiness, individual freedom of choice, being able to express one's individuality, being required to place a foreign object on my body that I may not agree should go there, and being forced to appear in public—a helmet is a piece of apparel—in a manner in which I don't like. Those are very emotional, very personal issues, and we feel the closer to the citizens that decision can be made, the best for everyone involved, and we think the State legislature is the appropriate place for that to take place.

The State legislatures don't want to pass these laws. When State Delegate Roy from Delaware was testifying before this subcommittee two weeks ago, he gave testimony about the number of mandates in the bill (ISTEA) and their concerns with that. When Chairman Rahall asked him about other concerns, other than the driver's license revocation provision, what other mandates did they have problems with, he clearly stated that the helmet law mandate was a provision that they had real problems with.

Fourteen State legislatures have rejected these helmet laws this year by votes in committee or on their Senate or House floors, and in 10 State legislatures they haven't even introduced a helmet law. Some 1,240 State Senators and State Representatives in those 10 States have made the decision it's in the best interest of their State not to have a helmet law, and yet they're faced with these Federal mandates.

As Jim Bensberg indicated earlier, motorcycle accidents and fatalities have been dropping dramatically since 1980, and not only have those rates been dropping, but also our fatality rates per million miles traveled, and I think that's a real key indicator. In 1977 we had 64.4 deaths per million miles traveled. In 1991 that had dropped to 34.6, a 52.6 percent reduction, and we don't think that any other segment of the motoring public can claim the reductions in deaths and accidents and fatalities as motorcyclists have.

We do think motorcycle rider education is a key reason for that. That point has been driven home today. I only want to make one comment about that area, and that is the fact that motorcyclists have created these programs ourselves. We went to State legislatures, we enacted laws to create the programs, we voluntarily raised our registration and licensing fees. Those raises in fees will raise over \$13 million in 1993 for motorcycle rider education. Motorcyclists pay for these programs, no one else. We think this type of action should be the model for citizen involvement in State government and not be mandated by Washington, D.C.

Our one concern with NHTSA's proposed rule is that it has an extremely double standard, and we don't feel that motorcyclists are being treated equally under the law. If this law is really what Congress wants, then NHTSA ought to be requiring that both helmet laws and seat belt laws be primary offenses. If that's not what's in the best interest of this country, then maybe we shouldn't have this mandate in the first place, and that's our belief. And if there is going to be secondary enforcement allowed, then it ought to be allowed across the board, not a double standard implemented.

One of the other problems with NHTSA's rule is the deadline for States to pass these laws is October 1 of 1993, and we're sitting here in May of 1993 and still don't have a final rule. Many of the State legislatures are already adjourned or getting ready to adjourn, and they don't even know what law they have to pass, because no final rule has been issued from NHTSA.

There was some confusion earlier about the standard in requirements. What our concern was with what is a helmet or a definition of a helmet is there's no definition in ISTEA for what a helmet is. There's a definition for seat belts, there's a definition for motor vehicles, there's a definition for motorcycles, but the law itself never addressed what it considered to be a qualifying helmet.

There are a number of problems with the standard. The standard was originally written in 1974. It has not been revised in substance since then. It's had two minor revisions in 1980 and 1988 dealing mainly with the size of the head forms that helmets were put on and refining some test procedures. What we would like to see included in a revision of the standard, which we are getting ready to petition NHTSA for, would be to take a look and take advantage of the new technology that's become available since 1974 in material so maybe we can make lighter helmets that motorcyclists would prefer to wear, and also to do some new testing procedures that reflect some of the changes in biomechanics research so we can really see how a helmet reacts on someone's head in an accident.

The other concern we have with the standard is that there were only 72 helmets tested in fiscal year 1992. The best projections we can get from some industry experts is there's between 750,000 and a million helmets sold every year, yet only 72 were tested. We don't think that's a random enough sample of the marketplace.

Helmets are not approved by NHTSA or DOT. There's no approved list that a consumer can get. DOT has told us they're prohibited by law from providing such a list. There's no way for motorcyclists to be notified of a helmet defect. There's no recall cards required to be provided to the consumer when they buy the product. There is no effective measure in NHTSA's programs to notify the consumer of a defect, especially once a manufacturer has gone out of business, and those raise serious concerns for us.

We have been doing a lot of work with NHTSA. As was indicated earlier, some NHTSA officials have come to the Motorcycle Riders Foundation's annual seminar every year, have helped to educate us about their concerns and their research methods. We appreciate that very much and continue to work in a productive manner with NHTSA and are going to continue to pursue this concern we have with the standard.

In our opinion, the biggest problem here is about the issue of where's the appropriate place for this issue to be decided. We feel it's the State legislatures. We feel this mandate is putting distance between State legislators and their citizens, and that's a concern. This bill had broad-based support in the Congress. It has 88 cosponsors, 20 percent of the House of Representatives from 36 different States. Broad, broad support. We encourage this committee to act as quickly as possible to repeal this penalty provision and to work with us on developing a constructive and beneficial incentive grant program that really addresses the bottom line—traffic accidents and fatalities and reducing them—and allow the States some of the flexibility that ISTEA was supposed to provide them and not be restrictive in this manner.

Thank you very much for your time.

Mr. RAFTER. Thank you, Mr. Chairman, and Members. Thank you for inviting ABATE of California to come and testify today. I am a member of ABATE of California. I also am a member of several other motorcyclist rights organizations—the MMA, the Helmet Law Defense League, and BOLT. I'm also a member, of course, of AMA and of Harley Owners Group. Harley Owners Group, as you may know, is not a political organization. It is a social organiza-

tion. However, it chooses to invite me as much as at least four times a month to come and present to their organizations about these issues, and I assure you that they're very concerned about these issues, even though the organizations are not political. There are also a number of non-motorcyclists that I'm exposed to that are also concerned about Federal mandates at any level.

All the people I represent are significant contributors to society through extensive charity work. We pay taxes, we have insurance, and riding motorcycles reduces congestion and the drain on natural resources. We feel we are violated by the mandatory legislation for helmets. The Federal mandate feels a little bit like my mother telling me that I have to eat my Brussels sprouts or go to bed. You know, we can do one or the other, and neither one is very appealing to us.

There's a lot of my testimony that's already been expressed by some of the other witnesses here today, so I'll skip over some of that and just underscore my written Statement. We have intimate experience with the wedge that's put between the voters, the public, and their legislatures through Avalon. A reasonable exemption was disallowed because our governor, who, by the way, helped to create the penalty language that ended up in ISTEPA, vetoed a reasonable exemption for the City of Avalon. The details are in your package. A meter maid exemption law is having difficulty getting through, and a citizen-mandated helmet law rollback bill was defeated in the Transportation Committee by one vote, and that had much to do with the possibility of loss of Federal highway funds.

The second item—I don't know where to start on the second item. This is what really drives me and why I came out here. The behavior of certain police agencies—and I want to underline "certain," because certainly not all—and certain police officers—and again certain, not all—their behavior has been a frightening experience—and I'll underline "frightening" as well—to motorcyclists, both riders and passengers. I never know when myself and my girlfriend are going to get pulled over by police, have my helmet inspected, have her subjected to a search by officers on the highway.

There's no approved helmet list. I can't go anywhere and say, "Oh, this is on the list. This is a safe helmet to buy." What that does is leave me at the mercy of the vendors and their honesty and the police. Our State helmet law is written such that I'm supposed to wear a helmet as defined by another statute, and that statute is a seller statute that says the helmet has to meet the specification. Well, if I'm wearing a helmet that the vendor has said meets the specification, then I'm not at fault, I guess, but the police are citing me and other people like me.

There's some other additional testimony I'd like to offer that was not in the original package. It turns out that the California motorcycle helmet law is an equipment violation that makes it correctable, also known as a fix-it ticket. That's a \$10 violation. That's the way it was written by the legislature, that's the way it's been interpreted by the Judicial Council; however, the California Highway Patrol is choosing to enforce their own interpretation of this law in saying that it is not a fix-it ticket and they will do full enforcement, although some local agencies are complying with the direction of

the Judicial Council. Unfortunately, the California Highway Patrol is not here, and I regret that they were not able to make it.

Item C outlines the estimated cost of California enforcement. I know my own riding has been curtailed. I used to ride 22,000 miles a year on a motorcycle. I now ride something like 18,000 miles a year, and I expect that will be reduced over time. The clubs I belong to ride less, they travel less distances. That also contributes, by the way, to lower fatality rates.

Item D, basically, the bottom line, from our point of view, is we don't buy the public burden theory. We pay insurance. There's all kinds of statistics. Supporters of helmet laws have their statistics, opponents of helmet laws have their statistics. We've got ours, they've got theirs. An example is—again, it's not in your package, but I've been able to distribute it separately—California Highway Patrol originally came out with statistics that said the accident rate was down 41 percent and the fatality rate was down 36 percent. ABATE of California looked at that and issued a press release saying what that tells us is the fatality rate per accident, the number of fatalities per 100 accidents, has actually gone up. What happened is then the Highway Patrol issued a new set of statistics that said: Oh, those ones didn't count, these new ones count, and that fatality rate has actually gone down.

By the way, they won't share their raw data, and they won't share their method of data collection with us. It makes us suspect for any statistics at all. What we would like to encourage the committee to do is to support independent studies by disinterested parties. If we're going to use statistics, let's get away from any biases that any organization might have.

Item E, it is our experience and belief—I offer my own personal testimony—that helmets reduce our ability to see and ability to hear. I chose to stop wearing them because of those reasons after 14 years. Helmets are not always a good idea. It all depends on how you land if you have an accident. In some cases they can do more harm, and in some cases they can do more good. The point is that it all depends on how you land, and having mandatory laws is violating somebody, forcing them to wear something that they believe can hurt them.

I also know motorcycle police that don't wear helmets when they're not on duty, when they're out riding their own motorcycles. They didn't wear helmets before there was a helmet law. I also know of a study that was highlighted in Popular Mechanics in 1991, I think it was the January edition. Volvo did a study on the effects of heat on drivers. They were testing their air conditioning systems, and they said between 70 degrees and 80 degrees, the reaction time of drivers at 80 degrees was 22 percent slower than the reaction time at 70 degrees, and I'm here to tell you that helmets are hot in the sunlight.

I also have something that's also not in the testimony—I was able to get it on short notice. I'm sorry for that. I'd be happy to share it with you. I have a summary of about 60 litigation cases that were won, and in 27 of those cases, the design of the helmet caused an injury that would have otherwise not occurred; in 13 others, the design of the helmet caused the accident—as a motorcyclist, that's a terror for me that I have to wear something that

might cause an accident for me; in 12 others, the design did not prevent the injury that it was supposed to prevent; and in 9 others, the helmet failed during the accident, meaning a quality problem. I'd be happy to share that with you as well. I'm sorry it's not in your package.

In summary, risk is fundamental to living. People don't go skiing to avoid risk. I'm a slow skier, and all these people zooming by me scare me to death, but I'm out there on the slopes anyway. People don't go horseback riding to avoid risk, people don't go bicycling to avoid risk, and people don't go motorcycling to avoid risk. We ask you to allow us to take the risk of working with our State legislators regarding motorcycle helmet use.

Thank you very much.

Mr. RAHALL. Thank you, Mr. Rafter. You submitted to us, which you referred to in your testimony, some information here that demonstrates or documents how the reduced data from the California Highway Patrol is suspect, and you have on it, "To the Gang, from Oz." Who is Oz?

Mr. RAFTER. Mike Osbourne is our—I don't know what his title is. He's our PAC committee chairman. He's the one who asked me to represent us today.

Mr. RAHALL. All right. Thank you.

Gentlemen, I have no specific questions. You heard me state earlier my views on section 153. I might just give you an opportunity if you'd like to respond to anything you heard earlier from previous witnesses, especially NHTSA.

Mr. CURTIN. One thing I'd like to respond to is some more on the standards in enforcement that Chairman Mineta was asking so much about. The way the standard is written, our interpretation of it—and I've had this acknowledged by NHTSA—is that it is really NHTSA's responsibility by this standard to keep helmets off the marketplace that do not meet the standard. Our concern in the actions that NHTSA has taken, when asked about what are they doing to educate the public, they talked about how they've been educating law enforcement to come down and harass motorcyclists or to be heavy hands of enforcement. What they're asking the police departments to do is to rectify a problem of getting helmets out of the marketplace or off the heads of consumers that NHTSA never should have let in the marketplace in the first place, and that's a major concern of ours.

Part of this, we think, is the problem with the limited amount of testing that's being done on helmets, and we would ask that before NHTSA encourages law enforcement agencies to have a heavy hand in enforcement in this matter, that they first have a concerted heavy effort at a public education campaign to educate the consumers as to what the problems are with helmets in meeting specifications and what people need to be wearing.

We also feel there are some real consumer protection problems with the way follow-up is done on the standard when a helmet is found to be defective. If a helmet fails a test, NHTSA enters into a procedure with that manufacturer that, in many cases, has taken over a year to resolve, and that entire time that helmet is still allowed to be sold on the marketplace and consumers are still buying what is potentially a defective product.

Once NHTSA determines that there is a real problem with this helmet and they push a manufacturer toward recall, there's no real solid way of notifying the consumers in the marketplace that they have a defective helmet. It's not like the child safety seats where there's now a registration card that's required to be provided with every child safety seat so that if there is a defect, the manufacturer is responsible for notifying the consumer. There's none of that.

There have been cases that when NHTSA has forced a manufacturer to a recall, what the manufacturer has ended up doing is going out of business. Once that happens, there's no other mechanism for NHTSA to follow to try to notify the general public that there's a problem. They don't try to notify the distributors, they don't try to get to the retailers, and there's no recall card on record anywhere for the consumer to be notified.

We think these are some real deficiencies in the area of the standard that we'd like to continue to work with this committee and work with NHTSA on opening up the standard for a major revision that we think needs to take place. Before the Federal Government starts to mandate helmet laws to the States, we think that we should at least straighten out this standard problem first and make sure that we are working with a quality product, and then we still don't think the Federal Government ought to mandate it.

Mr. BENSBURG. I would just say on the subject of mandatory helmet laws, Mr. Chairman, that reasonable people can disagree. I was interested in the comments earlier of Representative Tucker, who asked the previous panel what reason there was for lower fatality rates in some of the States that did not have a compulsory law, and I'm not sure anybody really knows. It would make sense to most folks who think mandatory helmet laws are a good thing that if you have such a law on your books, your fatality rate per 100 accidents, for example, would go down, but that's not always the case. I always like to make the analogy to the Baltimore Orioles, if you will, who have MVP Cal Ripken in their line-up. You would think that would guarantee you a pennant, but the Orioles, as we've seen over the years, have not fared so well in the American League.

Some of these things just defy logic, and I think it points up the need for another type of comprehensive report such as the study that was undertaken by NHTSA in the late 1970s and published in the early 1980s by Professor Harry Hurt at USC.

Mr. RAFTER. I would like to comment on the training that the people from NHTSA referred to. I have a copy of this video. Again, I don't know where to start on this. This is another emotional issue for me. Have you seen the video, the training that they referred to? I invite you to take a look at it.

A couple of things that are apparent in the video to me is that, one, it assumes that the motorcycle rider who is wearing a beanie helmet is a scofflaw. As a motorcycle rider who bought a beanie helmet that had all the labeling; the vendor represented it as being legal, and I have no way of knowing whether or not it will pass the physical test. As a consumer buying a consumer product that's regulated by the Federal Government, I'm obeying the law, as far as

I know. However, the video is telling the police agencies that anybody who is wearing a beanie helmet is a scofflaw.

I'm an engineer by schooling, and I can read engineering specifications like FMVSS-218 and understand them. In fact, I did some investigation on my own on this. There is some misleading information in that video as well. It says that it requires an inch of foam. There's no such requirement in the specification. There is some other misleading information about the labeling, whether helmets are illegal or not by the way they're labeled, and I invite you to take a look at this, hopefully with an open mind, and you'll be able to see some of this.

Now, that in itself is not a problem, depending on how the video is distributed and interpreted by the agencies. The San Jose Police, after viewing this video—by the way, distributed by the California Highway Patrol to them—within seven days set up a roadblock of something like six to eight patrol officers, mostly motor officers, to stop people riding motorcycles for a helmet check, and the city police confiscated seven to nine helmets. We were not able to keep count. Some of those were, by the way, according to the video, a legal helmet. Women were searched. One woman was searched twice by two different officers in a predetermined stop where they could have had a female officer present.

Also, the only way you can tell if a helmet meets a specification or not is by testing it, and by assuming that a police officer can look at a video like this and make—I can't make an assumption looking at a helmet whether it can pass or not. I don't know. Even if it has an inch of foam, I don't know if it passes the specification or not. And to be training policemen to make decisions that can only be made in a testing lab is really inappropriate, in my mind.

Mr. RAHALL. Thank you very much, gentlemen.

Our next panel is composed of Mr. Andrew McGuire, the Executive Director of the Trauma Foundation, and Co-Chair, Advocates for Highway and Auto Safety; Charles A. Hurley, Senior Vice President for Communications, Insurance Institute for Highway Safety; and Ms. Milo Kirk, President, Mothers Against Drunk Driving.

Gentlemen and lady, we have your prepared testimony, and it all will be made a part of the record, and you may proceed however you desire, in whatever order you desire.

TESTIMONY OF ANDREW MCGUIRE, EXECUTIVE DIRECTOR, TRAUMA FOUNDATION, AND CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY, ACCOMPANIED BY MARIE VAN LULING, VICE PRESIDENT, CONSUMER ISSUES, AETNA LIFE & CASUALTY, AND JUDY STONE, PRESIDENT, ADVOCATES FOR AUTO AND HIGHWAY SAFETY; CHARLES A. HURLEY, SENIOR VICE PRESIDENT FOR COMMUNICATIONS, INSURANCE INSTITUTE FOR HIGHWAY SAFETY; AND MILO KIRK, PRESIDENT, MOTHERS AGAINST DRUNK DRIVING, ACCOMPANIED BY JOHN MOULDEN, CHAIR, PUBLIC POLICY COMMITTEE, MADD NATIONAL BOARD OF DIRECTORS, AND TOM HOWARTH, MADD GOVERNMENTAL AFFAIRS OFFICE

Mr. MCGUIRE. Thank you, Chairman Rahall. I'm Andrew McGuire, the Executive Director of the Trauma Foundation and Co-Chair of Advocates for Highway and Auto Safety. I'm accom-

panied by Marie van Luling of AETNA Life & Casualty, who's in the audience, and she's also on the Advocates' board of directors, and Judy Stone, who is the President of Advocates.

Before I begin my abbreviated testimony, I'd like to relate a personal story, and this is a first statement of this publicly. Most of the people who are friends of mine here have never heard this.

I was in a motorcycle crash at age 20. It occurred the first time I ever got on a motorcycle as a passenger, and a friend of mine and I went on a short ride. At an intersection where we had the right-of-way, a person accidentally stepped on the brake, their foot slipped off the brake pedal and went onto the accelerator, and this person, therefore, accelerated through the intersection and hit us broadside in the intersection. The motorcycle went underneath the car and was totaled. We went over the car and landed approximately 25 feet away from the crash.

I had what was a relatively minor head injury. Since this was 1965, in California there was no mandatory helmet law in effect, obviously. Although it was a minor head injury, I ended up missing over a semester's worth of college. I had to quit working and had very severe headaches for about seven to eight months. I can't calculate the psychological or physical injury, but I can guesstimate what the financial costs were, because the person who hit us was uninsured.

My friend lost the motorcycle. I had to pay for a hospitalization of five days about two weeks after the crash. All together it was something that I eventually paid off out of my own pocket about two years later, paying on it monthly.

That was a very minor injury in a relatively minor crash and, I think, this points out that in that scenario I just gave you, from my personal experience, there's no way public educational efforts could have prevented us from being hit by someone who went through an intersection "accidentally." When a motorcycle hits a car, the car always wins, and the people on the motorcycle lose.

With that as my introduction, I, therefore, want to give you some of the background on why I'm committed to various parts of ISTE. I want to commend this committee for its leadership in giving safety a high priority in the ISTE. It's so often isolated from other highway programs, yet it should always be paramount and fully integrated into any highway program or project. I truly believe that ISTE brings this goal closer to reality.

Highway safety today holds great good news and horrible bad news. On the one hand, the Nation's fatality rate is at a record low. The proportion of fatal crashes in which alcohol is a factor continues to decline, and States are enacting vital safety laws. West Virginia, in fact, recently enacted a safety belt use law within the past month. Vermont is reportedly on the verge of doing the same. With Vermont, 45 States will have safety belt laws, and 23 will have both safety belt and all-rider helmet use laws.

The bad news is that so much more needs to be done. The number of people killed on our roads every year approaches 40,000. Motor vehicle crashes are the number one cause of death of Americans under the age of 35, constituting a major public health problem. Much of the annual \$137 billion cost of motor vehicle crashes is the cost of caring for crash victims. NHTSA estimates that the

cost of motor vehicle crashes in West Virginia, for example, Mr. Chairman, was \$868 million. The cost to Wisconsin, \$2.2 billion; Pennsylvania, \$5.7 billion; and my home State of California, \$15.6 billion.

I, therefore, want to start by discussing section 153, since this successful program has been criticized by others here today. Section 153 was created to encourage the adoption of State safety belt and all-rider helmet use laws, and it is working. At least five States have enacted either a safety belt or a helmet use law since ISTEA became law. The reasons for section 153 are clear. Safety belts and motorcycle helmets save lives, prevent injuries, and save tax dollars. State laws are the most effective means to get people to use safety belts and helmets. Section 153 works to encourage States to act.

As Chairman Mineta knows, our State of California saw a 37 percent reduction in motorcycle fatalities after our all-rider helmet law took effect. The GAO found similar results in many other States. May I add, Mr. Chairman, that on the 14th of this month there will be a study released at a press conference in California that has been jointly conducted by the UCLA School of Public Health, the UCSF Department of Surgery, that has been funded by the Office of Traffic Safety in California, the Centers for Disease Control in Atlanta, and the Insurance Institute for Highway Safety in Virginia, and I am prepared and authors of that study are prepared to submit to this committee the results of an evaluation of the California motorcycle helmet use law.

I think the results will put to rest any further critique or attack on the science of epidemiology, which I've heard earlier today. We do know that helmet use laws work, and this study, which is a prospective study, will lay to rest the false criticism that we've been hearing.

The provisions in 153 were written in cooperation with State officials. No State will lose any funds, and attached to my testimony is a list of more than 90 State agencies, State organizations, and national organizations that endorse section 153 as it is written. All States have the capacity of vision and political will to join the States which have already enacted both laws. Section 153 is a fair approach to encourage the States to act. Advocates strongly oppose any weakening or repeal of section 153.

Now for a couple of additional issues. In the interest of brevity, I will direct your attention to six additional areas discussed in my full testimony regarding section 402: design standards, truck safety, the management programs, work zone safety, and speed limit enforcement. All of these areas call for your active involvement, and we strongly urge the committee to provide guidance and oversight on these issues.

Now for some comments post-ISTEA. We hope that as the subcommittee begins to think about the future surface transportation programs, it takes visionary steps to further increase the safety of our roads. As mentioned earlier, we suggest tying funding for safety to funding for all highway programs. Another area we hope the subcommittee considers is encouraging the States to fill the gaps in our occupant protection laws for children. Attached are mate-

rials developed by the Children at Risk Campaign outlining the loopholes that exist.

In conclusion, we commend you, Mr. Chairman, and this subcommittee for your leadership in enacting a visionary law in the Intermodal Surface Transportation Efficiency Act. But if the full potential of ISTEA is to be met, your vigilance and involvement in the implementation of ISTEA is required. Advocates look forward to working with you, Mr. Chairman, and the other representatives on the committee in supporting this vital safety program in ISTEA and in future legislation.

Thank you very much.

Mr. HURLEY. Mr. Chairman, I'm Chuck Hurley with the Insurance Institute for Highway Safety. I'd like to submit my statement and summarize the key points.

ISTEA did signal an important change in national transportation policy. It set forth a regulatory agenda for the 1990s that's very positive. It called for numerous new programs, new regulations, other measures, complete with time tables for implementation to enhance highway and automobile safety. The challenge now is to keep all these new programs on track as they're being implemented.

I make a number of points in the statement, Mr. Chairman, beginning with a program that received heavy criticism this morning, the section 153 grants to States for belt and helmet use law implementation, and to tell you about a program we are launching in North Carolina where the Insurance Institute for Highway Safety is putting \$4.5 million of private money to match the efforts of North Carolina. North Carolina had one of the first belt use laws in the country. For a while it had the country's highest belt use rate, and now North Carolina has another first to its credit. It's the first with a multiyear effort to increase belt use rates, drunk driving and speed enforcement.

Governor Hunt and Insurance Commissioner Long have invited the participation of the insurance industry in a comprehensive five-year program. We will be working with the Governor's Highway Safety Office as a way of demonstrating, initially, in the first year, maximum occupant protection—safety belt use and child restraint use—borrowing heavily from the successful models around the world. Notwithstanding the important progress that's been made in safety belt use, the United States lags behind virtually every other country in the world in terms of safety belt use. Australia is at about 93 percent; Britain, 95; Germany and Scandinavia, about 97 percent; and four provinces in Canada, over 90 percent. In terms of health cost containment, this is one of the most important steps we can take.

In the second and third years, we intend to address issues of drunk driving and, in the fourth or fifth years, issues of speed reduction if political support is forthcoming.

The other points we raise in the statement, Mr. Chairman, quite frankly deal with the issues of scientific data of both the issues of helmet law effectiveness—there was a hearing in Arizona where, unfortunately, an incompetent study was cited as a reason to defeat the helmet law; and, secondly, a recommendation was made by AASHTO, the State highway officials in this country, that rec-

commended that this committee forget about 55/65 and repeal speed limits across the board. That is their right. They are entitled to do that. However, saying that you can increase speed limits without increasing fatalities and injuries is, frankly, a dishonest statement.

A number of the statements made by Members of this committee I think were a cause of deep concern to members of the highway safety community today. There really were two sets of issues. One set are the political issues, the issues of what programs are worth incentives, what programs are worth sanctions, and those issues you're much more qualified to deal with than ourselves. You have to get about 400,000 or 500,000 people to vote for you before you can be qualified on those issues.

The issues of scientific data of what works and what doesn't work, quite frankly, was bandied about today in a pretty light way, selectively using data to justify political agendas, be they honest political agendas. If this meeting were held at the National Institutes of Health, there probably would be charges of scientific misconduct filed based on a number of the statements made by Members and also by testimony received from panels.

There really is a way of deciding what works and what doesn't work. There is the scientific process of peer review. The decisions of sanctions and incentives are clearly political issues. That's what we have legislatures for. The issues of what works and what doesn't work is a very important subject to members of the highway safety community, and it's indeed distressing to see data cited off the cuff of States having higher belt use rates without laws than with laws, data used loosely about decreases in motorcycle fatalities based on repeal of helmet laws.

We are very concerned about a number of the issues raised and really would look forward to opportunities to work with you, Mr. Chairman, and other Members of the committee to address each of the data issues that were raised to bring the best scientific data that we have to bear. For example, with AASHTO, we would ask them either to justify the recommendation based on scientific data or withdraw the recommendation.

Highway safety is serious business. It deserves the same scientific review that other areas of public health have, and, frankly, we were very concerned at a number of statements made today which take us back some 20 years into an era of luck, fate, and magic, of any data is good data, and that is something that I think a number of us feel very strongly about.

Thank you, Mr. Chairman.

Ms. KIRK. Thank you, Mr. Chairman, for the opportunity to appear here today to express the views of Mothers Against Drunk Driving on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. I appear here today on behalf of the 3.2 million members and supporters of MADD, and I'm accompanied by John Moulden, who is our Chair of our Public Policy Committee on our National Board of Directors, and Tom Howarth, who is with our Governmental Affairs Office here in Washington.

This committee has played a critical role in the fight against drunk driving during MADD's 12 years as a grassroots advocate for the victims of this senseless and violent crime. The fight in which we have been engaged for those 12 years has met with success. In

1992 we saw the lowest number of highway fatalities in 30 years. Forty-six percent of highway fatalities in 1992 were alcohol-related, down from 57 percent in 1982.

No longer, Mr. Chairman, is it considered humorous or socially acceptable to drink and drive in this country. A fundamental change in public attitudes has taken place, but much remains to be done. In the words of Robert Frost, we at MADD "have promises to keep and miles to go before we sleep." MADD is dedicated to ridding our highways of drunk drivers, and we still have a long way to go until this goal is accomplished. There is no acceptable irreducible minimum number of victims.

In 1991 MADD and the Congress sought a way to consolidate and streamline existing Federal incentive grant programs designed to encourage the States to engage in the war against drunk driving by adopting and implementing comprehensive drunk-driving prevention programs. We examined those measures enacted or put into place since 1980 which had proven to be the most effective in getting drunk drivers off the road and reducing the number of alcohol-related crashes, fatalities, and injuries. From those deliberations came the section 410 Incentive Grant Program, which, like section 408 programs created in 1982, provides basic grants to States which meet certain basic criteria, with supplemental grants available to States which adopt additional measures.

The basic criteria contained in the section 410 program incorporate the major public policy goals of MADD. They include: adoption of administration license revocation and .08 BAC as the definition of intoxication by each State; the use of sobriety checkpoints, and the creation of self-sustaining anti-impaired driving programs, and the enforcement of "21" and mandatory sentences for repeat offenders.

Supplemental criteria include restrictions on open containers, license plate confiscation of those who drive with a suspended license, mandatory BAC testing in the case of death or serious bodily injury, a BAC level of .02 for persons under the age of 21, and the adoption of .08 BAC prior to expiration of the grace period included in the basic grant criteria.

Like the section 408 program before it, MADD believes that the section 410 program is a good program designed to produce a comprehensive attack against drunk driving.

As you might recall, Mr. Chairman, the other body, as I'm told it is referred to here, acted on ISTEA first in 1991. In the Senate's version of the section 410 program, the authorization level for grants began at \$25 million for fiscal year 1992, went to \$50 million for fiscal year 1993, and leveled off at \$75 million for fiscal years 1994 through 1997. The intent of this steady increase for authorization levels was to phase in this new program over several fiscal years and to provide increased incentives to States to fight impaired driving. The authorization levels contained in the Senate bill became even more critical with the adoption by the House of an apportionment procedure by which funds would be allocated to States.

At a \$75 million funding level, the section 410 program would, when funds are distributed on the basis of population and road mileage, produce a financial incentive equal to or greater than that

provided by its predecessor statute, the section 408 program. It was clear to MADD at that time that the Congress intended to increase, not reduce, the amount of financial incentive provided to the States.

The principal problem with the 1991 bill was that the funding level, which was one of the last issues resolved in the overall ISTEA legislation, was set at \$25 million per year for each year over the life of the bill. That meant that the States which qualified for funding would receive only one-third of the incentive provided in previous incentive grant programs and, thus, would have no real financial stake in passing additional legislation. In addition, if the State did not qualify for funding in a given fiscal year, the funding apportioned to that State would either be redistributed as a wind-fall to qualifying States or be simply lost to the program. In essence, this significantly weakened the incentive basis of the program.

It was for all these reasons that MADD advocated last year that the section 410 program be revised and that grants be made to qualifying States based on 30 percent of their section 402 allocation for a basic grant and an additional 5 percent for each supplemental criteria with which a State complies. These and other changes to the section 410 program were contained in the fiscal year 1993 DOT appropriations bill.

The changes made to the section 410 program last year mean that States will be given a real incentive to pass tougher anti-impaired driving laws, provided there are sufficient funds available to fund the awards. The change also makes the program cost more. In fiscal year 1993 some 17 States have qualified for the new section 410 program at a cost of about \$22.8 million when all basic and supplemental grants are covered. Assuming some new States will qualify for fiscal year 1994, the cost of covering grants for which States qualify is likely to exceed the authorized amount of \$25 million.

When the anticipated shortfall in funding is coupled with the changes in the awards procedure permitting NHTSA to release to qualifying States less than the full amount to which the State would otherwise be entitled because of insufficient funds, the incentive nature of the entire program is threatened.

MADD was very gratified to know that the Clinton Administration recommended that the section 410 program be funded at the fully authorized level of \$25 million. We would suggest, however, that the authorized level be increased to make room for the new States which are likely to qualify for funding. When additional States qualify, it is good news for the fight against drunk driving, and that good news is measured in lives and injuries that will be saved and prevented.

We would suggest that the authorization level be set at \$50 million for fiscal year 1994 and \$75 million for the fiscal years 1995 through 1997. In addition to increasing the authorization level for the section 410 program, consideration should also be given to increasing the section 402 funding. Since the amount of the award to a qualifying State under section 410 is fixed based on a percentage of 402 funds, an increase in 402 funding would allow for an increase in the resources available to the States for investment di-

rectly into the drunk driving programs. This would further enhance the entire 410 program.

Mr. Chairman, there have been some 1,400 pieces of legislation passed at the State and Federal levels in the last 12 years to combat drunk driving. At both the Federal and State levels, there is much quality legislation on the books, but laws are only as good as their enforcement, and it is in enforcement that many of our laws fall short. A State can have a model statute or restrict underage drinking, but if that same State cannot pay inspectors to enforce the statute, the end result will bear little relationship to the intent of the legislation.

MADD believes that Congress would bolster the fight against impaired driving several-fold by dedicating a portion of the tax on alcoholic beverages to support State and local anti-impaired driving law enforcement. It is appropriate for the most responsible for the problem—the users of alcohol—to help provide the financial resources for its control.

Mr. Chairman, I appreciate the opportunity to appear today and share my views with you. I urge this committee to maintain its commitment to the fight against impaired driving. As the recent death of Nancy Thurmond, the 22-year-old daughter of Senator Strom Thurmond, makes abundantly clear, drunk drivers do not discriminate in whom they kill. Any of us can become a victim of an impaired driver without a moment's notice. We've come a long way, but the impaired driving problem has not been solved, and the fight must continue.

Again, thank you.

Mr. RAHALL. Thank you for your testimony.

Mr. McGuire, let me ask you, why do you think that incentives alone are not sufficient to encourage States to pass seat belt laws and helmet use laws?

Mr. MCGUIRE. Why incentives alone? First of all, there's a significant amount of political pressure and groups working at the State level and the Federal level that don't want helmet laws or belt use laws. We heard from them in the panel right before us. I think that Mr. Hurley made it clear that there are political answers to that very question of how much political pressure these groups can apply to State legislatures or Members of Congress which counteract incentives.

Then there's the data. When you look at the data, it's clear that incentives help to a degree in doing it, but I think that ultimately we must have mandatory helmet laws, and I would hope that down the road we would have primary enforcement of belt laws to reduce nearly 40,000 fatalities on the highway that is, any way you measure it, a major public health problem that we shouldn't abide by as policy.

Mr. RAHALL. Can you give us an example of two of the loopholes that exist in some States in regard to child safety seats and safety belt laws?

Mr. MCGUIRE. Maybe Chuck can—

Mr. HURLEY. I'd be glad to. The program that Advocates has launched is based on a study we did of different States. A lot of the gaps relate to children traveling in rear seats, not being covered, and cases of transported by a guardian, sometimes trans-

ported by other than a parent. These laws were implemented in fact with incentive grants provided by this committee in a bill that Chairman Howard sponsored in 1984.

That's why we have 50 child restraint laws. They were passed with the help of the American Academy of Pediatrics. They were quite controversial at the time, and, therefore, there were a number of amendments, including one in the first law, which allowed for children to be unrestrained during the care of their personal needs, either nursing or change of diapers, and carried on laps of a parent was another one.

It's now time probably to go back in and strengthen the laws. Kids under four don't have the option of protecting themselves. They rely on parents and society to do that.

Mr. RAHALL. Let me ask you, Mr. Hurley, with regard to the intermittent application of 55 and 65 speed limits between rural and urban areas, has your institute looked at whether motorists actually slow down to 55 miles an hour in those speed zones?

Mr. HURLEY. In fact, we did. That's a pretty good issue to talk about. There are political issues related to speed limits. You've heard a lot about them today. There also are issues of data where scientific findings are pretty clear as it relates to your specific issue.

Speed limits are complied with generally, with about a 10-mile-an-hour tolerance for radar. People are smart. They know what speeds will generally get them a ticket. If you raise speed limits to 65, do people do 65? No, they don't. They do more like 75. At 55 they were doing 65. So do speed limits matter? Yes, they do. But people that advocate increases in speed limits and say that it will not increase loss of life or injury, quite frankly, are being dishonest. If a politician wants to say, "We want to raise the speed limit, and, yes, it's going to cost us, in this case, 500 lives for rural interstates," that's an honest statement.

This committee obviously deals with the airline industry a great deal. If someone were to say we could increase airline speeds in this country by about 15 percent and all it was going to cost is a couple of jumbo airliners going down, do you think this committee would have supported that? Probably not. AASHTO, builds the best transportation system in the world, and builds bridges not on the basis of junk science. If someone were to come along and say, "You know, that bridge would look better if we took a strut out of it, and we found an economist that backs us up," would they think that's a rational recommendation? Probably not.

I think a number of us certainly on this panel and others in the room feel that highway safety is important business, that the political issues should be separated from the scientific issues. Legislatures are free to decide where they want to set speed limits, where they want to place sanctions or incentives, but are probably not entitled to misrepresent the data, and that's something we feel very strongly about.

Mr. RAHALL. I noticed in your testimony you called for outlawing the use of radar detectors in big truck rigs. Would you also call for the abolition of CB radios?

Mr. HURLEY. We have not, and that's because CB radios have another purpose. It's not often used for another purpose, but it has

another purpose. There is no other purpose for radar detectors other than to break the law, and eight groups, including Advocates, the Insurance Institute, the National Safety Council, AAA, the National Association of Governor's Highway Safety Representatives, the American Trucking Associations, and a range of other highway safety groups, petitioned DOT two years ago to ban them solely for interstate trucks. Fifty percent of the trucks carrying hazardous materials, Mr. Chairman, not only have, but are actively using, radar detectors. The reason that gas tanker's on your bumper is because he's got a radar detector.

DOT, unfortunately, has dragged their feet. We have not had a decision. We should have had one about a year ago. We would very much hope that you and others on the committee would help us get that done. Three States have enacted such bans. We hope more do.

Mr. RAHALL. Opponents of the motorcycle helmet law state that motorcycle helmet laws have not resulted in lower insurance rates. Could you comment on that?

Mr. HURLEY. I'm pleased to tell you we have a hard enough time keeping track of highway safety. We don't have to deal with the tough issues of rates. I can tell you in the State of Washington, where they kept track of the cost of motorcycle injuries, the Harborview Injury Prevention Center did a study of the cost of care of injured motorcyclists. Do you know what the cost to the taxpayers was for those costs? It was 64 percent. Sixty-four percent of the cost of caring for injured motorcyclists was picked up by the taxpayers. It takes young, hardworking, taxpaying Americans and turns them into wards of the State.

Your specific question on rates is one that I'd be glad to get one of the trade associations to answer and reply back for the record.

Mr. RAHALL. I'd appreciate that, because my question was directed toward the rate that the biker pays, the insurance rate that he pays.

Mr. HURLEY. As I understand it—I'm not an expert in that. As I understand it, motorcycle insurance generally is for liability, not for either health coverage or other types. But I'd be glad to get one of the trade associations to respond back.

Mr. RAHALL. Okay. I appreciate it.

Ms. Kirk, let me ask you, have you been able to determine which of the criteria required for basic grant eligibility has been the most difficult for the States to meet?

Ms. KIRK. That's hard to say. Probably .08. We now have eight States that have passed .08. We had five, and then we've had four more, and we're waiting on the Governor to sign it in one State, which would bring us to nine. But I'd say probably .08. ALR is passing throughout the Nation. We have some concerns about it, though. I think basically the public needs to be better educated on what the meaning of .08 is. There's a lot of misinformation out there about .08.

Mr. RAHALL. You recommend near the end of your testimony that we bolster the fight against impaired driving by dedicating a portion of tax on alcoholic beverages to support State and local anti-impaired driving law enforcement. Are any States using such a tax on alcoholic beverages currently to support anti-impairment driving law enforcement?

Ms. KIRK. Well, we know that Utah is and possibly one other State, but, no, we're not seeing a lot of that. California has legislation that's pending. Hopefully, it will pass this session. They have introduced it before but have not been able to pass the legislation. But MADD has a clear view of this, that when the tax is raised on alcohol across the board, including beer, that a percentage of it be dedicated to this use. Otherwise, MADD doesn't support raising taxes on alcohol. We want to see the dedicated money to fighting this crime.

Mr. RAHALL. All right. Thank you.

There are a number of questions that the ranking minority Member, Mr. Petri, has for you in particular, Mr. Hurley, and I'd like to ask permission they all be submitted for the record in writing and that you respond back to the minority on those.

Mr. HURLEY. I'd be delighted. I used to work for his predecessor, Bill Steiger.

[The questions and responses follow:]

INSURANCE
INSTITUTE
FOR
HIGHWAY
SAFETY

June 29, 1993

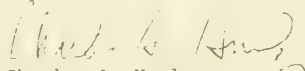
Ms. Becky Weber
Room B-375
Rayburn House Office Building
Washington, DC 20515

Dear Ms. Weber:

As you will recall, I was invited to testify before the Subcommittee on Surface Transportation on implementation of the Intermodal Surface Transportation Efficiency Act of 1991 on behalf of the Insurance Institute for Highway Safety. On May 4, the day of the hearing, the Subcommittee's Counsel presented me with a list of written questions concerning the Federal Highway Administration's proposed rule prohibiting the possession and use of radar detectors in commercial vehicles.

Enclosed are the written questions and the Institute's response for the record.

Sincerely,


Charles A. Hurley
Senior Vice President

Enclosure

Response to Questions Concerning Radar Detectors in Commercial Vehicles

Question 1:

In the Federal Highway Administration Preamble to the Notice of Proposed Rulemaking, the agency noted that "scientific proof establishing a direct causative linkage between radar detector use and commercial motor vehicle accidents may not exist". In light of this statement, is the IIHS aware of any studies that would directly link radar detector use to motor vehicle safety?

Yes. By their own admission, more than half (56 percent) of the drivers who use radar detectors drive faster than they would without them (Opinion Research Corporation, 1988). When asked how much faster: 46 percent said 6-10 mph faster; 20 percent said up to 5 mph faster; 18 percent said 15 mph faster; 11 percent said 20 mph faster; and 5 percent said 25 mph or more faster.

These findings are consistent with research reporting actual observed travel speeds of vehicles equipped with radar detectors. In one study of radar detector use in trucks, data were collected in 17 states. At least 52 percent of all trucks and 50 percent of trucks carrying hazardous materials were found to be equipped with operating radar detectors. The detector-equipped trucks were more likely than those without radar detectors to be speeding (Teed and Williams, 1990). On interstates with a 65 mph speed limit, more than twice as many trucks with radar detectors were observed exceeding the speed limit by at least 5 mph and three times as many were exceeding it by at least 10 mph. On interstates with a 55 mph speed limit about one and one-half times as many trucks with radar detectors were observed traveling at least 10 mph over the speed limit and more than twice as many were traveling at least 15 mph over the speed limit.

Another study of radar detector use in trucks using data from seven states revealed that about one and one-half times as many trucks with radar detectors were exceeding 65 mph as those without detectors and twice as many were exceeding 70 mph (Williams et al., 1990).

In Maryland and Virginia, for all categories of vehicles, those with radar detectors in use were much more likely to be speeding than those without detectors and the higher the travel speed, the more likely the vehicle was using a radar detector (Freedman et al., 1990). Three times as many cars with radar detectors were exceeding 70 mph (15 mph over the speed limit) as cars without detectors. An earlier study in Maryland and Virginia had similar results. Radar detector equipped vehicles exceeded the speed limit by a significantly greater margin than those without detectors (Ciccone et al., 1987).

In addition, the probability of being involved in a crash is greater for radar detector users than for nonusers (Cooper et al., 1992). A group of radar detector users was identified through insurance records in British Columbia and compared to a similar group of nonusers. The radar detector user group was more likely than the control group to

show a history of accident claims and to have accident claims in which the driver was declared at fault. The authors concluded,

drivers in the sociodemographic group that we investigated who own radar detectors were probably less safe than their counterparts in the general driving population as evidenced by accumulation of higher levels of accident-related claims.

The authors declined to conclude that there is a direct causal relation between detector use and safety; however, their data strongly support the existence of such a relation. The British Columbia study also lays to rest a claim often made by radar detector supporters, that radar detector users have a higher crash involvement than nonusers because their exposure is greater due to the higher mileage they drive. The authors note,

every effort was made to control for travel distance. Within the limits of available data, we can state that the higher accident claims and convictions for radar users were probably not a result of greater driving exposure.

Question 2:

Given the historical responsibility of the states to regulate highway and traffic safety, how can the insurance industry justify the federal government usurping what has traditionally been the purview of the states? Isn't this a states rights issue?

Since 1936, the federal government has maintained a comprehensive scheme of regulations governing vehicles traveling in interstate commerce. A federal ban of radar detectors on commercial vehicles is not a usurpation of states' rights any more than the regulations governing vehicle equipment or issuance of commercial licenses are usurpation of states' rights in those areas.

Federal involvement in highway safety is extensive. The federal government provides millions of dollars to the states for highway construction and for highway safety programs, including funding state enforcement initiatives. The federal government also bears a significant part of the burden of paying for lives lost and injuries caused by motor vehicle crashes through Social Security, federally funded rehabilitation programs, and other welfare programs.

Highway safety is a national problem and national solutions are appropriate. It makes little sense for Congress to authorize funding for state programs to deal with excessive speed while declaring it a state's right to permit the sale and use of a device promoted and sold for the exclusive purpose of conferring speeders protection from tickets. All the insurance industry and other highway safety advocates ~~are~~ requesting on this issue is a reasoned and consistent policy. Permitting the use of radar detectors evidences a shameful tolerance for excessive speeding that adversely affects both crash probability and severity.

Question 3:

Does IIHS have any information regarding the impact on the radar detector industry and the number of jobs lost as a result of this regulation?

No.

Question 4:

What problem are you trying to resolve?

(follow up):

What proof do you have that radar detector use causes speeding?

Speed is a major contributing factor to both crash causation and crash severity. Over three thousand people died in tractor-trailer crashes in 1991. The majority of these were occupants of passenger vehicles. Research has repeatedly demonstrated that radar detectors are common in trucks, especially tractor-trailers.

Radar detectors have but one purpose, to assist a driver to avoid police radar speed enforcement. They are the electronic equivalent of the "lookout" who signals to a criminal that the coast is clear.

Given the relative size of trucks and the damage they are capable of inflicting in a serious crash, there is absolutely no justification for permitting truckers to use radar detectors to assist them to speed.

To the extent that radar detectors are effective in helping speeders avoid citations, they undermine the states' driver record systems, making them less accurate as a predictor of driver risk than they otherwise would be.

At least one study found that radar detectors are possibly not effective in protecting drivers from tickets (Cooper et al. 1992). Even if that is true, radar detector use has safety implications because the single most important criterion affecting a driver's decision about whether to violate traffic laws is his/her perception of the likelihood of being caught. Radar detectors purport to confer immunity from citation. A brief review of radar detector advertisements confirms this.

On the relationship between radar detector use and speeding, see the responses to Question 1.

Question 5:

I noted your testimony in support of the FHWA's rulemaking to ban radar detectors in large trucks. I'm very interested in why the insurance industry cares about this issue. What evidence does the industry have that leads to its position?

The Insurance Institute for Highway Safety and insurers care about the radar detector issue because they have both a humanitarian and an

economic interest in reducing the losses associated with vehicle use. The evidence cited in response to the other questions lead it to the conclusion that banning radar detectors in commercial vehicles will make the highways safer for all vehicle occupants.

Question 6:

Virginia bans all radar detectors, doesn't it?

Yes.

Question 7:

In July, 1990, IIHS published a study entitled "Radar Detector Use in Large Trucks". Are you familiar with this study?

Yes.

Question 8:

That study would seem to be very relevant to the FHWA rulemaking mentioned in your statement today, wouldn't it?

Yes, because it documents the extent to which radar detectors are in use in large trucks.

Question 9:

In that study, published by IIHS in July, 1990, you noted "no evidence was found that Virginia's ban on radar detector use was effective in reducing use" of radar detectors. Yet, now you want the federal government to ban them in every state? Why?

It is well documented that compliance with motor vehicle laws is strongly related to drivers' evaluation of the likelihood of being caught in violation of the law. When the study, "Radar detector use in large trucks," was published, Virginia, the District of Columbia, and Connecticut were the only three jurisdictions in the United States that banned all radar detectors in all vehicles. A commercial vehicle constantly crossing state lines is not likely to be deterred by so limited a prohibition.

Prohibiting the possession and use of radar detectors is sound public policy. The study to which you refer indicates that a piecemeal approach is not the most effective way to handle the issue and that federal intervention is appropriate.

Further, this study was conducted before the general availability of devices designed to detect radar detectors. In the Institute study, the newly developed radar detector detector was used to determine which vehicles were using radar detectors and nondetectable radar was used to measure vehicle speeds. With the availability of this new technology, radar detector bans can be effectively and efficiently enforced.

Question 10:

Also in your July, 1990 study you noted that in Maryland, 11 percent of vehicles travel with radar detectors while right next door, in Virginia, again a state with a ban, 14 percent of vehicles possess them. Also, in your study, Connecticut, which banned the devices at that time, was among the states with the highest use of radar detectors in heavy trucks.

How can you support a federal ban, one which would apply in every state, when your own study, your own data, show such a ban to be ineffective? Further, how would you propose the individual states enforce such a federally-mandated ban?

There is nothing in any Institute study suggesting a federal ban on the use and possession of radar detectors would be ineffective. See the response to Question 9.

The proposed federal ban on radar detectors would be part of the Federal Highway Administration's Motor Carrier Safety Regulations. It would be enforced during vehicle inspections, at weigh stations, and during routine vehicle stops. Enforcement of the ban would be no more difficult than enforcement of the ban on alcohol use and possession in commercial vehicles.

Enforcement officials wishing to enforce a radar detector ban can use radar detector detectors. As noted in Question 9, at the time the Institute's study was conducted, these devices were not generally available for use by law enforcement agencies. They are now a widely available and inexpensive law enforcement tool for detecting the presence of an operating radar detector. The Institute has tested one model of radar detector detectors and found it to be an effective tool for identifying radar detector equipped vehicles (Lund et al. 1990).

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Mr. RAHALL. One final question or comment to you, Mr. Hurley. You referred in your testimony or you alluded to scientific misconduct. I believe that was the direct quote.

Mr. HURLEY. Yes. It was not in my testimony, it was in my oral statement.

Mr. RAHALL. In your oral statement, vis-a-vis statements that were made by previous panels, previous individuals. That's a pretty harsh statement, so I'd like to leave the record open and suggest that you respond with specifics in regard to that statement.

Mr. HURLEY. We'd be delighted, Mr. Chairman.

Mr. RAHALL. And also that those to which you allege that conduct be allowed to respond as well.

Mr. HURLEY. I agree that's a very serious issue. It's often difficult in a hearing situation to have a substantive discussion on this, but we would very much like to see the issues of what works and what doesn't work laid out. If there's any statement we make that is proven wrong by scientific peer reviewed data, we'd be delighted to withdraw it. We would hope that others would, too.

Mr. RAHALL. All right. I appreciate that. Thank you.

Our next panel is composed of Mr. John Archer, the Managing Director for Government Relations, American Automobile Association, and Mr. Fred Johnson, the President, Lectric Lites, Inc., and President, American Traffic Safety Services, Inc.

Gentlemen, we welcome you to the subcommittee. We have your prepared testimony, and it will be made a part of the record, and you may proceed as you desire.

TESTIMONY OF JOHN ARCHER, MANAGING DIRECTOR FOR GOVERNMENT RELATIONS, AMERICAN AUTOMOBILE ASSOCIATION; AND FRED JOHNSON, PRESIDENT, LECTRIC LITES, INC., AND PRESIDENT, AMERICAN TRAFFIC SAFETY SERVICES, INC.

Mr. ARCHER. I'm John Archer. I'm representing the AAA, serving more than 34 million members. We appreciate the opportunity to testify. I will certainly summarize and will be brief.

AAA urges the subcommittee to help ensure that the National Highway System is developed according to standards maximizing safety. The lack of standards, in our view, is a serious concern. For instance, a worst-case scenario would be an NHS route consisting of a six-lane divided highway with limited access, crossing a political boundary, and suddenly becoming a two-lane full-access facility.

To prevent this type of example from becoming reality, AAA urges serious consideration of the following standards to be applicable to NHS routes: all travel lanes to be a minimum of 12 feet wide, since NHS routes will be widely used by large trucks; all routes on the NHS to be divided, at a minimum, by a concrete barrier; incorporation of urban bypasses to separate long distance travel from local traffic; and all NHS routes to consist of at least four travel lanes.

The lack of NHS signing poses another issue for motorists. The interstate system logo and U.S. route signing now identify roads of so-called national significance. In contrast, it's now contemplated the NHS roads would not be identified by either a unique logo or

sign. We believe this should be changed to assure that the average motorist knows whether he or she is on the NHS.

The NHS also has the potential of becoming an opening wedge for the increased use of longer combination vehicles, the so-called LCVs. AAA strongly urges the committee to continue to resist efforts to lift or modify the Federal freeze on the LCV use. There are just simply too many safety questions regarding these vehicles.

Additionally, there is a need for accelerated research on the challenges posed by our aging population. It should focus on how older drivers can better cope with age-related declines in driving skills and how improved automotive and highway design can better meet their needs and improve their safety.

AAA also strongly supports the universal adoption of mandatory safety belt and motorcycle helmet use laws. We were pleased to see ISTEA provide incentives for States to adopt these important measures and are disappointed by efforts to weaken or repeal them.

Thank you again for the opportunity to testify. I'd be happy to respond to questions at the appropriate time.

Mr. JOHNSON. Mr. Chairman, and Members of the subcommittee, I am Fred Johnson, President of Lectric Lites, a company in Ft. Worth, Texas, and National President of the American Traffic Safety Services Association, known as ATSSA. I'm pleased to be here today.

ATSSA is a national trade association in its 23rd year of representing nearly 1,000 companies and individuals in the traffic control industry. We are in a unique position to offer suggestions on the sections of ISTEA addressing highway safety. Today I would like to submit our written testimony for the record and to make some recommendations in the areas of, first, Safety Management System; secondly, work zone safety; thirdly, uniformity of standards for traffic control devices; and, lastly, safety-first ready-to-go projects.

We have heard a number of witnesses here today testify to the terrible toll that accidents impose on our overburdened health care and legal systems. ATSSA would like to point out that there are roadway improvements that can be made which have been identified as having some of the highest payoffs and being the most cost-effective of safety expenditures.

Our first area of concern is with the Safety Management System prescribed in section 1034. The DOT has issued a proposed rule on the Safety Management System, but it does not include specific guidelines on how to implement the program. As you know, general endorsements of systems do not ensure their existence. Primarily, we are concerned that there are no inventory or inspection systems set up within the Safety Management Program such as there are for bridge and pavement management systems.

A recent ATSSA survey revealed that less than half of the States have sign inventory systems. Without guidelines, signs and pavement marking assessment will continue to be more random than scientific, and the sign deficiency rate will continue to be cited by the FHWA at 30 to 50 percent.

A technical amendment in the 1993 Transportation Appropriations Act requires the Secretary of Transportation to establish a minimum level of brightness for signs and pavement markings. The

amendment also requires the DOT to define which roads must have center lines, edge lines, or both. Unfortunately, no date has been set when this will be accomplished.

To ensure that pavement markings and signs are maintained at an acceptable level of visibility, we would recommend that Congress expedite this process by providing a date when the standards should be established. We further recommend that all paved roads be marked with center lines and edge lines based on average daily traffic count. In order to assist local agencies in coping with the increased cost of these improvements, we ask that funding be set aside for local agencies specifically for this effort.

You know, pavement markings have a benefit/cost ratio of 60:1. I think this is phenomenal. So this expenditure would well be worth the small investment.

Next I would like to move on to the Work Zone Safety Program. Section 1051 of ISTEA states that the Secretary shall develop and implement a program to improve safety at highway construction sites. ATSSA recommends that the following elements be included in any work zone safety management program. First of all, safety and training is essential. We recommend a strict training and certification requirement for personnel responsible for work zone traffic control. Additionally, in order to encourage States to use adequate traffic control devices and procedures, 100 percent Federal funds should be made available for work zone traffic control as is now done with other safety improvements listed in section 120(c). Thirdly, each State highway department should be required to collect, analyze, and use uniform data on all work zone accidents. Lastly, the Secretary of Transportation should conduct annual reviews to ensure the effectiveness of each State's work zone safety practices.

Next I would like to address uniformity of standards for traffic control devices. Consistent, uniform standards for work zone traffic control devices should apply to all roadways regardless of jurisdiction. ATSSA has recently published a quality standards book, which you should all have a copy of—we will distribute to you at a later time if you don't—with photos of acceptable, marginal, and unacceptable devices that we're using as minimum standards for our industry. We have heard from several States that have adopted these levels of performance for their own projects, and we'd like to see all States support these standards.

Finally, I'd like us to think safety first and recommend some ready-to-go projects. Despite the fact that this committee set aside 10 percent of the STP funds for safety construction activities, analysis of the program shows only 6 percent of the total STP funds that are obligated had been used for safety. We need to examine why and what can be done to correct this funding inequity.

In his economic stimulus package, the President had asked Congress to provide an additional \$2.9 billion for highway and bridge projects that could be put under contract within several months. We hope that Congress will find a way to pass this vital part of the stimulus package. We also support the full funding of ISTEA and the return to the trust fund of the 2.5 cents that is currently being collected but not being used for transportation.

The President also asked that the States put this new spending to work within six months with ready-to-go projects. ATSSA recommends that this additional funding be used toward labor-intensive and cost-effective safety improvements that could begin immediately and are crucial to highway safety, such as sign replacement. As some estimates indicate, there are as many as 53 million signs that need upgrading. If we only replace the worst 15 percent of the deficient signs, we estimate States could use an additional \$1.08 billion. Half of that cost would go toward labor.

Another area is improved pavement markings. As with sign replacement, this work is highly labor-intensive. We estimate that States could use an additional \$400 million very quickly for additional striping for State and local roads by using fast-track administrative procedures.

Our written testimony outlines additional safety improvements that could be implemented quickly and make our highways safer. These types of projects on our Nation's roadways do not require engineering or environmental impact studies. They can begin immediately, would put people to work immediately, and would be highly visible to the millions of motorists who travel the highways each day. Making highway safety improvements such as these will create jobs, will help renew our Nation's infrastructure, and reassert a historic competitiveness, and these improvements will save lives.

Again, thank you for this opportunity to be here today, and I would invite any questions that you might have.

Mr. RAHALL. Thank you, gentlemen.

Mr. Archer, you make a number of recommendations and raise interesting safety questions in regard to the construction of the National Highway System, and those are all very much appreciated and valid points that you raise. In your opinion, are there any provisions in ISTEA that weaken highway construction safety standards?

Mr. ARCHER. Not that I'm aware of. The question would be, from AAA's perspective, are adequate safety standards required by ISTEA.

In informal, but serious conversations with FHWA staff that we have an ongoing relationship with, our understanding is that FHWA trusts that these kinds of standards will be imposed by states, but isn't requiring them. So ultimately the States can do what they want to do.

AAA is concerned about the kind of example cited in our testimony, which, in a parenthetical way, an official of FHWA cited to us.

Another scenario might result from the perceived need on the part of some States to connect the National Highway System completely—to the point where they would try to utilize mountain roads just two lanes wide, with many curves. If such a road would be included on the National Highway System, it would encourage accidents. A scenario will illustrate the problem: a heavy truck struggling up a mountain road that's only two lanes, someone makes an illegal pass and hits another car coming the other way.

AAA doesn't want any of our members meeting such an unsafe driver. That wouldn't happen if the motorist wasn't unsafe, but the

road invites the problem. AAA believes that there should be at least four lanes so passes can be made safely.

Twelve-foot travel lanes are essential. The reality is the National Highway System is going to become a defacto truck network. The only question is how big the trucks will be. In the best of all possible worlds, the NHS would utilize interstate-type standards. The reality is that that's not doable from a cost standpoint.

AAA would like to see divided highways, roads divided at least by a concrete barrier. Divided highways eliminate the possibility of collisions between ongoing traffic. That's one of the biggest causes of fatalities. Second, they automatically eliminate illegal passes.

AAA also advocates bypasses around urban congested areas. The beltway around 95 would be an example of such congested areas. People in the suburbs of D.C. view the beltway as Main Street. People traveling from New York to Florida view it as one part of Interstate 95. The traffic mixes very badly.

Mr. RAHALL. You discuss older drivers in your testimony and concerns for their safety and recognition of their increased numbers. What highway safety programs does AAA consider most effective for older drivers?

Mr. ARCHER. There is no magic bullet. One of the approaches we ask for is additional research.

Our foundation has done a number of studies we would be happy to share with staff. Those studies advocate common-sense approaches, that would help everybody, but particularly older drivers.

For instance older drivers have trouble seeing at night—thus lights in key places are important. They often have a terrible time reading signs. Diverted attention causes accidents; it's not just an irritation.

Also, there's the big question of licensing. Senator Danforth is sponsoring legislation AAA has supported. His bill addresses the dilemma of a licensing official dealing with a very responsible person who may be 75 or 80, and have declining capabilities. This person may have an exceptional driving record, and yet have some problems that objectively might suggest that this person should not have a license to drive.

The solution, AAA believes, is a provisional license, a concept AAA just endorsed at our annual meeting last week.

A provisional license is a license that gives you the right to drive, but under specified conditions. Examples would extend all the way from the requirement that the driver wear glasses, to limits on the speed people can drive.

For instance, some people drive very well at 30 miles or 35 miles per hour and don't want to go on high-speed roads, and have no need to. Typically they just want to go to church and the grocery store, and they can safely do so. They don't need to go 55. Innovative motor vehicle administrators are looking at such provisional limits. AAA has a study we'd be happy to share with staff about that issue.

Mr. RAHALL. We would appreciate that.

Mr. Johnson, how do you think safety has fared under ISTEA, especially in regard to highway design- and construction-related safety?

Mr. JOHNSON. Well, as it relates to construction-related problems, I think we've been shortchanged. I think we need to return to the funding policy and formulas outlined in ISTEA. I think that there needs to be more emphasis on education as it relates to ISTEA. Our certification program is one way of doing that. We've trained about 9,000 individuals up to this point in our program, and have about 2,000 certified at this point. We have about 12 States now that are using the certification program as a guideline for education of those involved in construction work zone signing and safety.

So I think the funding issue is the most critical issue right now, closely followed by the educational process.

Mr. RAHALL. What would you say is the single most critical factor that's contributing to work zone safety deaths and injuries? Lack of training, lack of an adequate plan, lack of state-of-the-art traffic control devices, or some other factor?

Mr. JOHNSON. Well, one key factor, Mr. Chairman, would be uniformity of traffic control devices as you go from area to area and State to State. For example, in Texas, which is an awful big State, you may find different situations from county to county because there's not a uniform application. Now, I know the name may sound misleading when we say we have a manual on uniform traffic control devices. It's a wonderful manual, but somehow that doesn't filter down to the local level in all cases, particularly in enforcement.

Now, when I mention enforcement, that's another arm of uniformity. That's another problem that goes along with that. Of course, if we don't have uniformity, then enforcement is a little bit difficult, too.

But education, I guess, is a third part of that equation that ranks very high, and I touched on that a moment ago. We would like to see more education in the licensing aspect of obtaining your driver's license. There have been some strides made in that, but I think we can make additional gains there.

Mr. RAHALL. You state that highway departments should collect uniform data on work zone accidents. Is there no requirement by FHWA to report work zone-related accident data?

Mr. JOHNSON. They do collect it, as far as I know. However, I don't think there's any uniform way to collect it and disseminate it to all States for useful purposes.

Mr. RAHALL. They collect it, but do they report it?

Mr. JOHNSON. They collect it, I would suspect, from the police reports that are generated from the accidents. Yes, that information is collected. But we don't feel like there's a uniform dissemination of the information for improving safety.

Mr. RAHALL. Okay. Thank you, gentlemen.

[Subsequent to the hearing, the following was received from Mr. Johnson:]



AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION, INC.
 ATSSA BUILDING
 5440 JEFFERSON DAVIS HIGHWAY
 FREDERICKSBURG, VIRGINIA 22407
 (703) 898-5400 FAX (703) 898-5510

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May 5, 1993

The Honorable Nick Rahall II
 Chairman, Surface Transportation Subcommittee
 2369 Rayburn House Office Building
 Washington, D.C. 20515

Dear Mr. Chairman:

I want to thank you for inviting us to testify before your committee yesterday on the implementation of the ISTEA as it relates to highway safety. You demonstrate your interest in traffic safety by holding hearings of this kind, and we appreciate your willingness to listen to our concerns. Our president, Fred Johnson, was delighted to be able to represent the association at the hearing.

I would like to make a correction to what I am afraid was an incorrect response to one of your questions following our testimony. You asked if the Federal Highway Administration was collecting data on work zone accidents. Mr. Johnson responded that he thought they were collecting the information from the states, but they weren't doing anything with it. Actually, the states are not collecting the data at all. In December, 1989, the FHWA eliminated the state and division narrative reports and requested that the states stop sending work zone accident data to the FHWA headquarters. Apparently, many states had failed to collect the data, and those that did collected it inconsistently, so the FHWA simply eliminated the reporting requirement altogether. We know the number of fatalities that occur in work zones, but beyond that, we know very little. We don't even differentiate between who is killed, whether it is a motorist or a worker--we only know that approximately 700 fatalities occurred last year in work zones. This is from FARS data, and there is no data reported on injuries.

We would recommend that each state highway department be required to collect uniform data on all work zone accidents. Such data should include the type, design, and operational characteristics of work zones in which accidents have occurred; the type of roadway; traffic volume; the nature of the accident; and the extent of the damage, injuries, or fatalities sustained. Each state highway department should also analyze and use this information to correct deficiencies and to improve future traffic control plans. We feel that uniform reporting procedures would go a long way toward improving future traffic control plans. It is difficult to correct deficiencies when there is no evaluation system in place.

Yours sincerely,

Caroline Carver
 Director, Government Relations

Mr. RAHALL. That concludes our five-day series of oversight hearings on ISTEA. I think this series of oversight hearings has demonstrated that we still have many challenges to overcome in addressing the Nation's infrastructure needs. There have been many interesting points raised, many differences of opinion on some of those points. But for my part, as Thomas Jefferson once said, I much prefer to dream to the future rather than the history of the past, and that dream is, of course, of a more efficient and a safer transportation system that will take us into the 21st century for generations to come to enjoy.

So that's what we're talking about, and with that, this subcommittee stands adjourned. Thank you.

[Whereupon, at 2:54 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

PREPARED STATEMENTS

SUBMITTED BY WITNESSES



American Automobile Association

Washington Office

1440 New York Avenue, N.W.
Suite 200
Washington, D.C. 20005
202/942-2050

FAX 202/783-4788

Testimony of

John Archer
American Automobile Association

Before the

Subcommittee on Surface Transportation

Related to

Highway Safety Issues
and Implementation of the
Intermodal Surface Transportation Efficiency Act of 1991

1. Full Funding of ISTEA
2. Safety Implication of the National Highway System
3. Longer Combination Vehicles and NAFTA
4. AAA Members Overwhelmingly Oppose LCVs
5. Older Driver Concerns
6. Safety Belt and Helmet Use Laws

May 4, 1993

The American Automobile Association is one of the largest motoring and travel organizations in the world. AAA's more than 1,000 affiliated club and branch offices are located throughout the United States and Canada. AAA, a fully tax-paying not-for-profit organization, offers a wide range of member services and works for the improvement of motoring and traveling conditions.

The American Automobile Association, serving more than 34 million members, appreciates this opportunity to comment on safety issues associated with implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Full Funding of ISTEA

To maximize benefits derived from ISTEA -- including its safety benefits -- the act must be fully funded! With the financial outlook for the Highway Trust Fund apparently worsening, it is vital that federal highway user taxes be used for highways -- not deficit reduction.

The 2.5 cent federal motor fuel tax currently earmarked for deficit reduction should be returned to the Highway Trust Fund, as Secretary Peña has advocated. It is time to put "trust" back into the concept of "Trust Fund."

Safety Implication of the National Highway System

The concept of a NHS is in accord with existing AAA policy stating that "the federal government should be responsible for roads of national significance." But AAA urges the committee to help ensure that the National Highway System is developed according to standards maximizing safety.

A lack of uniform safety standards applicable to the NHS conceivably could lead to safety hazards. A worst case scenario

would be a NHS route consisting of a six-lane, divided highway with limited access crossing a political boundary and suddenly becoming a two-lane, full-access facility. These kinds of examples lead AAA to urge serious subcommittee consideration of the following issues:

- Should all travel lanes on the NHS system be a minimum of 12-foot travel lanes since the NHS will be widely-used by large trucks?

- Should all routes on the NHS be divided highways (at a minimum divided by a concrete barrier, often termed a Jersey barrier)?

- Should the NHS incorporate urban bypasses to separate long distance travel from local traffic (where such bypasses do not already exist)?

- Should all NHS routes consist of at least four lanes?

- The lack of uniform signing for the system poses another issue for motorists. "US route signing" and the Interstate System logo now identify roads of "national significance." In contrast, as now contemplated, the NHS would not be identified by any special or unique identifying logos or signs. With some 130,000 miles of the Primary system not

included on NHS, the average motorist may not know whether he or she is on the NHS?

Longer Combination Vehicles and NAFTA

The NHS has the potential to become an opening wedge for the increased use of longer combination vehicles (LCVs). This is especially true in those trade corridors between Mexico, Canada and the United States which may be encouraged by congressional approval of a North American Free Trade Agreement (NAFTA).

AAA urges this Committee to resist any efforts to lift or modify the mandated freeze on expanded use of double and triple trailer combinations with gross weights in excess of 80,000 pounds. There are simply too many unresolved safety questions associated with the use of these big rigs.

For instance, "98 percent of the people killed in 2-vehicle crashes involving a passenger vehicle and a tractor-trailer in 1991 were occupants of the passenger vehicles" (Fatality Facts 1992, Insurance Institute for Highway Safety).

A passenger car can stop in 140 to 150 feet from 60-miles-per-hour on a dry road. However, a loaded, tractor-trailer combination truck under similar conditions, takes 250 to 300 feet to stop. An empty combination can take up to 400 feet!

Those stopping distances are for vehicles with properly adjusted brakes. Your car and mine have self-adjusting brakes. But brakes on most large trucks are not self-adjusting, a technological deficiency reflected in alarming truck inspection results: approximately 50 percent of large trucks removed from service for mechanical reasons had deficient brakes.

Although LCVs have been used for years, primarily in Western states, they are operated by the industry's best drivers under very tightly-controlled conditions on some of the safest roads in the world. In more normal traffic environments, LCVs pose serious potential safety hazards.

For instance, it takes longer to pass them, and their heavier weights cause more trouble maintaining constant speeds on grades.

The additional distance necessary to pass a 110 foot truck as opposed to the traditional 65 foot truck would vary depending on the speed differential between the truck and the passing motorist. At a speed differential of 5 mph, it would take a motorist an additional 494 feet to pass these larger vehicles. A speed differential of 15 mph would reduce that distance but still require 165 additional feet to safely pass the truck.

A 1984 study undertaken by the California Department of Transportation (CALTRANS) tested LCV use over a 1,200 mile route. The study disclosed several disturbing findings. Triples had a continual sideways sway of four to six inches while traveling over open road segments. This swaying at times increased to well over one foot and "had a noticeable effect on adjacent traffic."

Triples also had a noticeable impact on urban arterials, roadside rest areas and at truck weighing scales because of their longer lengths.

Turnpike doubles were the least maneuverable of the combinations tested. They had problems with interchanges, intersections and off-tracking tests. They even had problems maneuvering through the latest design interchanges in rural areas. A survey of state highway departments by American Association of State Highway and Transportation Officials (AASHTO) found that only about 25 percent of the interchanges on the Interstate System could safely accommodate turnpike double combinations.

Information contained in the Model Driver's Manual for Commercial Vehicle Driver Licensing, developed for use by the Essex Corporation, further underscores the potential safety problems associated with increased use of LCVs.

"Trucks with trailers have a dangerous 'crack-the-whip' effect. When you make a quick lane change, the crack-the-whip effect can turn the trailer over. There are many accidents where only the trailer has overturned."

The "crack-the-whip" effect is caused by rearward amplification. This is the condition that was apparent in the CALTRANS study mentioned earlier.

The manual also details the degree of risk for trailer rollover because of rearward amplification. Triples have a rearward amplification factor of 3.5, the highest of the eight vehicle combinations rated, which means the last trailer of a triples combination can be rolled over 3.5 times as easily as a five-axle tractor semitrailer with a 45 ft. trailer.

AAA Members Overwhelmingly Oppose LCVs

A 1990 legislative survey of AAA members among 25 clubs prepared by AAA's Department of Market Analysis and Research found that 91 percent of the respondents were strongly opposed to allowing triple trailer trucks on the Interstates with ages 65 and over more opposed than other age groups. A subsequent survey of 1,000 Americans on transportation issues done for AAA found 63 percent of the respondents favoring the banning of triple trailer combinations from all highways.

AAA club poll after club poll consistently find heavy trucks on our members' list of things they hate to face on our roads today. And they don't want them getting bigger. Our members do not want to face combination vehicles that could run 110 to 120 feet long -- especially when the average automobile is only about 2,700-3,000 pounds.

Older Driver Concerns

The driving population is getting older. According to a Transportation Research Board report on Transportation in an Aging Society, a growing percentage of the U.S. population is over 65 years of age. Improvements in medicine and health care are prolonging usable years. With an increasing number of older people living in the suburbs, fewer will want to give up access to their automobiles. As it is, more than 80 percent of trips made by those 65 and over are made in an automobile, and that reliance is growing.

Information from the Federal Highway Administration discloses that licensed drivers 55-59 increased in number by 21.7 percent between 1970 and 1989. Licensed drivers 60 and over increased by 109.3 percent over the same period, and for the group 70 and over, the growth was a whopping 193.3 percent!

According to University of Florida research, by the year 2000, one-third of American drivers will be more than 55 years of age. By the year 2020, 50 million Americans will be age 65 or older, and 90 percent of them will be licensed to drive. They will continue to rely on the automobile for their mobility and independence.

Older drivers have slower reaction times. They may be on medications that adversely affect their driving. They tend to drive slower. They may have diminished eyesight and physical strength.

Consequently there is a need for accelerated research on the challenges posed by this aging driver population. It should focus on how older drivers can better cope with age-related declines in driving skills, and how improved automotive equipment and design can better meet their needs and improve their safety.

AAA urges support for legislation that would promote implementation of programs to improve the safety of these older drivers. Such programs could yield important safety benefits for everyone who shares the road.

Safety Belt and Helmet Use Laws

AAA also strongly supports the universal adoption of mandatory safety belt and motorcycle helmet use laws. We were

pleased to see ISTEA provide incentives for states to adopt these important measures. We are disappointed to find that there are now efforts to weaken or repeal these life-saving provisions. We urge this Committee to strongly oppose any such proposals.

Thank you for the opportunity to express AAA's views on these important issues.



National Association
of Governors' Highway Safety Representatives

James Arena
Chair
Dante Thomas
Vice Chair
William Leighty
Treasurer
Susan Bryant
Secretary
Barbara L. Harshbarger
Executive Director

Statement of James A. Arena
Chairman
National Association of Governors' Highway Safety Representatives
Before the
House Public Works Committee
May 4, 1993

**Statement of James A. Arena
NAGHSR Chairman
Before the
House Public Works and Transportation Committee
May 4, 1993**

I. Introduction

It is a pleasure to appear before you today to discuss implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

I am James A. Arena, Governor's Representative for New Jersey, Director of the New Jersey Division of Highway Traffic Safety and Chair of the National Association of Governors' Highway Safety Representatives (NAGHSR). NAGHSR is the national association of state highway safety offices. Its members are appointed by their Governors to develop and implement their state highway safety programs and to administer the federal highway safety grant programs for their respective states. The Association is primarily concerned about driver behavior issues (such as impaired driving, occupant protection, pedestrian, bicycle, and motorcycle safety) as well as truck safety, roadway safety, emergency medical services, and safety management systems.

Significant progress has been made in highway safety over the last decade. Last year, the motor vehicle death rate fell to 1.8 fatalities per 100 million miles of travel -- the lowest rate in thirty years. Alcohol-related fatalities declined by 11%, while national safety belt usage jumped from 49% to 62%.

Despite the progress, motor vehicle crashes remain a major cause of death and injury in this country. Last year, more than 39,000 persons were killed on the highway, and over 5 million were injured. Motor vehicle crashes continued to be the leading cause of death and the largest cause of injury for persons aged 5-32.

At the same time, the costs associated with motor vehicle crashes continued to escalate. According to a recent report of the National Highway Traffic Safety Administration (NHTSA), traffic fatalities cost the country \$137.5 billion a year in lost productivity, medical costs, property damage, insurance administration, and legal and court costs. One third of the first year costs of motor vehicle injuries are paid for by the taxpayer in the form of Medicaid and Medicare payments. Another substantial portion of costs is in the form of lost tax revenues to federal, state and local treasuries. Reducing the number of motor vehicle injuries will lead to a much-needed reduction in national health care costs and reduced taxes to support Medicare and Medicaid.

Clearly, much remains to be done to decrease the number and cost of motor vehicle injuries and fatalities in this country.

II. 402 Program

The 1991 surface transportation legislation continued and made few changes in the basic state highway safety grant program, also known as the Section 402 State and Community Highway Safety grant program (23 U.S.C. 402). Under this program, funds are apportioned to every state for the development and implementation of state highway safety plans. The state plans may address a wide range of driver-related behavior highway safety issues including: impaired driving, occupant protection, police traffic services (primarily enforcement of state and local highway safety laws), motorcycle, pedestrian and bicycle safety, emergency medical services, roadway safety, and traffic records.

ISTEA identified additional priority highway safety issues that state plans may address, and also required states to collect, report and analyze additional highway safety data elements. There were no statutory deadlines associated with either of these requirements. The National Highway Traffic Safety Administration (NHTSA) has not issued implementing regulations for either requirement, so state highway safety activities have not yet been affected. NHTSA has given states preliminary indications that it will issue a list of revised 402 priorities this summer. No target date has been established for the data collection requirements.

NAGHSR does not have a major concern about changing the list of 402 priorities. The states are already addressing nearly all of the priorities suggested by the authorizing legislation. As long as states continue to have the flexibility to address those priorities (or not address them) based on documented state needs, then changes to the list of priorities will not dramatically affect the way in which state highway safety agencies plan and program federal highway safety funds. We would strongly oppose, however, any attempt to make some or all of the national priorities into mandatory state requirements. Mandating state highway safety expenditures would result in the wasteful and ineffective use of federal funds, since state needs vary so much from state to state.

The Association is quite concerned about the requirement for states to collect additional highway safety data. NAGHSR strongly supports the goals of uniform highway safety data and has worked with NHTSA and the Federal Highway Administration (FHWA) to formulate the Critical Automated Data Reporting Elements (CADRE) -- the minimum single set of data elements that states should collect. We have also assisted NHTSA in the development of a traffic records assessment program with which states can assess how well their traffic records system measure up against recommended criteria.

We believe, however, that the data elements identified in ISTEA fail to address the systemic problems states have in collecting, reporting, and analyzing traffic records data. Limited resources, lack of adequate training, outmoded data collecting technology, inadequate coordination between state agencies as well as between state and local agencies, and other factors contribute to the difficulties states have with traffic records systems.

Mandating the collection of new data elements will not solve any of these problems. Rather, NAGHSR recommends that traffic records problems must be addressed within a broader safety framework. State agencies with a safety interest must identify common safety goals and objectives and evaluate their traffic records systems in light of those goals and objectives. They must identify needed improvements to those systems, and then prioritize those improvements so that limited resources can be spent most effectively. We believe that the Safety Management System (SMS) requirements of ISTEA will motivate states to develop goals and objectives and work toward a common set of safety-related data elements. We would strongly prefer to see data collection issues addressed within this context.

Additionally, implementation of CADRE and improvement of state traffic records systems will be quite costly. Preliminary analysis has indicated that it typically costs a state \$1-2 million to make minor changes to a police accident report form, while major changes can cost \$3-5 million. While ISTEA authorized additional funds for the 402 program in FY 94-97, it is unlikely that Congress will appropriate the fully authorized amount. DOT has requested only \$123 million in appropriations for the 402 program in FY 94, despite the fact that \$143 was authorized.

Over the last several years, demands for state action on highway safety issues have increased dramatically. States are being asked to more aggressively confront impaired driving (particularly among underage drivers), to increase safety belt usage, to improve the level of correct child safety seat usage, to improve enforcement of posted speed limits, to address the problem of drugged driving, to encourage the passage of motorcycle helmet laws and to enforce those laws, among other things.

At the same time, highway safety grant funding has not increased to meet those demands. Funding for the NHTSA portion of the 402 program was increased only slightly in FY 92 for the first time in seven years, and then reduced again the following year. Funding for the FHWA portion of the 402 program has remained at the same \$10 million level for the past twelve years. If inflation were taken into account, funding for the 402 program would actually show a 30% - 40% decline over the last ten years. Funding for the 402 program did not increase in 1987, when other highway funding leaped upward, and no funding highway safety grant funding increases were proposed under the economic stimulus package.

Even though the 402 program is a relatively small federal program, it has been a highly successful one. It has been a major contributor to the decline in the motor vehicle fatality rate. Improvements in vehicle design standards, roadway improvements, emergency medical services programs, and highway safety research and state funding have also contributed to the declining death rate. The success of the federal highway safety grant programs in my own state of New Jersey is shown in the attachments.

Based on the NHTSA report on the cost of motor vehicle injury, fatal crashes alone cost \$31.2 billion in 1990 -- \$702,281 for each traffic death. If the societal cost of \$702,281 per fatality is applied to the 1,962 reduction in the number of fatalities which occurred between 1991 and 1992, then the U.S. avoided \$1.38 billion in medical and other costs during that time period. NHTSA also calculated that in 1992, severe injuries declined 3,256 from 1991 levels. At an average cost of \$373,393 for each severe injury, an additional cost of \$1.21 billion was avoided as a result of highway safety improvements.

During FY 92, \$190 million was appropriated for all federal highway safety driver behavior grant programs, including the incentive grant programs (\$118 million for the NHTSA 402 program). A comparison of the savings from the fatality reductions to the expenditures for the grant programs indicates that, for every \$1 spent on grant programs, \$7.25 was avoided in fatality costs. If the avoided costs of severe injuries are included, the benefit rises to \$13.53 for each federal highway safety grant dollar spent. Even assuming very conservatively that driver behavior grant programs contributed to only half the reduction in fatalities and injuries (and that other factors and programs contributed to the remaining half), then the return on the investment in federal highway safety programs would still be nearly 7:1 -- a return that few federal programs can claim.

The 402 program has helped states develop programs which led to passage of state laws, improved enforcement of existing laws, changed public attitudes, built state and local leadership in highway safety and, at least in part, led to the substantial savings in medical and other costs. At a time when there is overwhelming concern about escalating health care costs, any federal program which will keep costs down is well worth renewed federal support.

NAGHSR urges the House Public Works Committee to convince its appropriations counterpart to fund the 402 program at the authorized level.

III. 153 Program

ISTEA created a new Section 153 program (23 U.S.C. 153) which provides states with incentive grant funds if they adopt both mandatory motorcycle helmet laws and safety belt laws and if they satisfied specific usage requirements. In FY 92, 17 states, Puerto Rico and the District of Columbia qualified for 153 funds. Twenty-eight states are not currently eligible for 153 grants because they do not have one or both laws.

Florida did not accept its FY 92 153 apportionment, and Tennessee accepted a partial apportionment because of an error in the Minimum Allocation (MA) program, as authorized by ISTEA. Under the MA program, states are guaranteed a 90% return of their estimated tax payments attributable to highway users in the state and paid into the Highway Trust Fund (excluding the Mass Transit Account). The MA

calculation is based on a state's allocation of National Highway System funds, surface transportation program funds, grants for safety belt and motorcycle helmets, and funds for several other programs.

The net effect of this formula is that, for every dollar a state accepts in Section 153 safety belt and motorcycle helmet incentive grant funds, it loses one dollar in Minimum Allocation funds. As a result, there is no incentive for MA states to accept 153 grant funds, particularly if the state has sizeable construction needs. As a result, states are forced to make a trade-off between safety and construction -- a trade-off which is not only poor public policy but one we believe was never intended by this Committee. NAGHSR urges the House Public Works Committee to delete the safety belt and motorcycle grant program from the MA formula and restore the incentive to the 153 program.

A second problem is that the 153 program inadvertently penalizes states that adopt a mandatory helmet or safety belt law in the middle of a fiscal year. Section 153 (f)(2) indicates that a state is eligible for a second year grant only "if it had in effect at all times a law described in section a(1)..." (emphasis added). The intent of this language is to prevent states from adopting a law in order to receive an incentive grant, only to rescind the law shortly thereafter. While NAGHSR concurs with the intent of the language, we believe the provision has led to undesirable consequences.

NHTSA has interpreted this language to mean that a state must have a mandatory use law in effect for a full federal fiscal year in order to become eligible for a second year grant. For example, if a state adopts a mandatory use law and it becomes effective on November 1, the state will immediately receive a first year grant. However, the state must wait 23 months (October 1 of two subsequent years) until it is eligible to receive a second year grant. NAGHSR believes that the 153 program was not intended to operate in this manner. We recommend that the statutory language should be clarified and that NHTSA should be directed to change its interpretation of (f)(2). States should be eligible for second year grants, regardless of when their use laws become effective. States that adopt and then rescind their mandatory use laws should immediately lose their eligibility for Section 153 funds.

A third concern is that the statutory language regarding motorcycle helmet laws is unclear. A few state legislatures have tried to circumvent the intent of the 153 program by adopting motorcycle helmet laws that allow secondary enforcement. Under such laws, a motorcycle rider could be given a citation for noncompliance only if he or she is stopped for some other traffic violation. In its implementing regulations, NHTSA has not allowed states with secondary helmet laws to be eligible for 153 grants since secondary enforcement would dilute the effectiveness of the mandatory use law and send a mixed message to motorcycle riders. NAGHSR strongly concurs with this interpretation and urges the House Public Works Committee to clarify the statutory language on this issue.

A fourth issue relates to funding for the 153 program. Section 153(e) indicates that the maximum aggregate amount of grants a state may receive is 90% of its FY 90 Section 402 apportionment. Using that formula, the 153 program should have been authorized at \$103 million over three years -- \$34.33 million per year -- instead of the actual authorization level of \$65 million over three years. Since authorized funding is significantly below what it should have been, qualifying states are eligible for smaller than expected grants.

Additionally, yearly appropriations have fallen far short of the authorized level. Only \$24 million has been apportioned to the states in FY 92 and 93 -- the same level as was authorized for FY 93 alone. The Administration has requested \$15 million in FY 94 -- \$9 million less than the authorized level. As a result, state apportionments under the 153 program have been minimal. New Jersey, for example, received an apportionment of \$446,010 in FY 92. In a state of more than 7 million people, the federal assistance equaled to little more than 6 cents a person to operate an occupant protection and motorcycle safety program.

NAGHSR submits that the higher the level of incentives, the more likely a state is to enact qualifying legislation, particularly in those states that are facing severe budget shortfalls. The Association strongly suggests that if the 153 program is to be completely effective, it should be funded at increased levels. We urge the House Public Works Committee to work with the House Appropriations Committee and fund this important program at the authorized level in FY 94.

A final issue relates to the penalty provisions of the 153 program. Bills have been introduced in the House and Senate which would delay the penalties or rescind them altogether. NAGHSR is strongly opposed to those proposals.

NAGHSR firmly believes that mandatory safety belt and motorcycle helmet use laws work. Safety belt reduces the risk of fatal or serious injury by 45% - 50%. NHTSA estimates that 4,682 lives were saved by safety belts in 1991 alone, and that an estimated 29,568 lives were saved between 1983 and 1991. By buckling up, motor vehicle occupants saved an estimated \$3 billion in medical and other costs in 1989. If all front seat occupants had used safety belts, an additional \$4 billion could have been saved.

NHTSA also estimates that mandatory motorcycle helmet use laws reduce the risk of fatal injury by nearly 30%. Between 1982-87, NHTSA estimates that 4,645 lives were saved by motorcycle helmets. If every rider had been wearing helmets during that same time period, more than 9,000 lives could have been saved. The usage rate for states that have mandatory helmet laws is nearly 100%, since enforcement of such laws is so easy. For states without such laws, usage rates average 36%.

Further, NAGHSR believes the penalty provisions are a viable solution to the problem of state inaction on occupant protection issues, and they do not cause the states to lose any transportation funds. We feel redirection is a far preferable approach than more traditional sanctions. Sanctions are often counterproductive and generally do not link a problem with an appropriate solution. Unlike sanctions, the redirection provisions directly link a safety problem (inadequate occupant protection) with a safety solution (increased funding for occupant protection and other safety programs.) To the Association, the redirection provisions are a signal that Congress has listened to state concerns about sanctions and has enacted a less onerous, more logical and more acceptable approach.

We also feel that the penalty provisions have been very effective. Since enactment of the Section 153 program, North Dakota, West Virginia and Nebraska have adopted safety belt laws, Maryland has enacted a motorcycle helmet law, and 22 other states have introduced motorcycle helmet or safety belt bills this year alone. NAGHSR believes that any weakening or delay of the penalty provisions will send a message to the states that the penalties should not be taken seriously - a message that we do not support.

We urge the House Public Works and Transportation provisions to retain the penalty portions of the 153 program, as authorized.

IV. 410 Program

Under ISTEA, the Section 410 Drunk Driving Prevention grant program (23 U.S.C.410) was refocused on five of the most significant impaired driving activities that states could undertake. The eligibility criteria were also restructured so that they were more performance-oriented -- a goal that NAGHSR strongly supports. A technical error was made, however, and one of the basic grant eligibility criteria was inadvertently omitted from the final version of the authorizing legislation. The FY 93 DOT appropriations legislation corrected this error and made several other changes to the 410 program, all of which NAGHSR supported.

As a result of the changes enacted in ISTEA and the appropriations bill, nineteen states qualified for 410 grants in FY 92. NHTSA estimates that all those states, and potentially four to six more may be eligible for grants in FY 93. (FY 93 grants have been held back pending the promulgation of final 410 implementing regulations.) We believe that the 410 program has been instrumental in motivating states to pass administrative license revocation laws -- one of most effective impaired driving countermeasures -- and to develop self-sufficient impaired driving programs. Since the program's inception in 1992, four states have adopted ALR laws, four states have passed .08 BAC laws, and three states have adopted zero tolerance laws for underage drivers.

We are pleased that the Administration has requested \$25 million (the authorized level) for the 410 program in FY 94 and that funding will be an increase over last year's level. However, we do not feel that this amount will be enough, given the additional applicants to the program. NAGHSR urges, therefore, this Committee to increase the authorization for the 410 program.

V. Speed Enforcement

Excessive speed continues to be a major highway safety problem. NHTSA estimates that 34% of all fatal crashes in 1990 were speed-related and that 12% of all reported crashes are speed-related.

One bill has been introduced in the House which would eliminate the compliance formula and allow the speed limit to be set at the 85th percentile speed of free flowing traffic. Another would allow the states to set speed limits. NAGHSR opposes both bills.

NHTSA Impact analyses of the 65 mph speed limit showed that increased speeds resulted in increased fatalities. If states were free to choose their own speed limits, they would come under considerable political pressure to set them at high levels, perhaps even higher than 65 mph in the western states. More speed-related fatalities can only be the logical outcome of such action.

While the 85th percentile may make sense from an engineering viewpoint, it does not take into account the activities surrounding the roadway, the traffic volume, the accident history, and other factors. Even the Manual on Uniform Traffic Control Devices -- the commonly accepted guidelines used by traffic and highway engineers -- recommends that the 85th percentile and a number of other factors should be considered when determining the appropriate speed limit.

ISTEA requires the Secretary of Transportation to develop a new speed compliance formula and enforcement plan for 55 mph and 65 mph highways. DOT is directed to assign greater weight to speed violations in proportion to the extent the posted speed is exceeded and to differentiate between different types of roads on which the speed limit is violated. The Agency must also consider state enforcement efforts, speed-related data, and other factors. States that are in non-compliance with the speed requirements will face redirection of highway construction funds.

In January, FHWA and NHTSA jointly issued a proposed change to the existing speed enforcement regulations. NAGHSR, in general, supports the proposal and believes that the Agencies made a good effort to satisfy the intent as well as the specific requirements of ISTEA.

One concern we have is that the proposed formula does not include graduated sanctions. A state that is one point over the compliance ceiling is subject to the same sanctions as a state that is 50 points over. NAGHSR recommends that the final formula include graduated sanctions so that the size of the sanction reflects the degree of non-compliance.

The Association supported the proposed penalty mitigation measure because it changes the sanctions into potential incentives and recognizes that state highway safety efforts are comprehensive and

integrated. We do not, however, feel that the proposed mitigation is large enough or structured properly. NAGHSR recommends that the penalty threshold should be raised somewhat so that noncompliant states do not find it so difficult to be eligible. Alternatively, the amount of penalty to be mitigated could be increased so there is more of an incentive to comply. A third option would be a graduated set of penalty mitigations, so that the lower a state's fatality rate, the more the penalty is mitigated.

Finally, NAGHSR is concerned about the lower compliance ceiling for 55 mph states. We felt that it might serve as a disincentive for those states to maintain the lower speed limit. With a lower ceiling, the 55 mph states are more likely to be out of compliance than the 65 mph states, and more susceptible to pressure to raise the limit. The Association recommends that there should be one compliance ceiling for both 55 mph and 65 mph states.

VI. Safety Management Systems

In lieu of federal safety standards on certain federal-aid highways, ISTEA requires states to develop Safety Management Systems (SMS). The intent of the SMS requirement is to ensure that safety is considered in every phase of project conceptualization, development, and implementation. ISTEA, however, did not specify the SMS process, participants, applicability, form or content.

Last summer, FHWA issued an advance notice of proposed rulemaking on all the management systems and then held three field hearings. NAGHSR participated in all three hearings, and we have actively working with FHWA and NHTSA on SMS issues.

NAGHSR believes that the SMS requirement is one of the most important in ISTEA. It creates a mechanism by which states and localities can incorporate safety concerns into planned highway improvements in a meaningful way. It will provide a framework for all state, regional and local agencies toward a single set of established safety goals and objectives.

We view SMS as a planning tool by which a state should establish safety goals, identify comprehensive programs, incorporate safety concerns into project development, and target federal, state and local resources to projects which will have the greatest safety impact. A state's safety management system should also provide a feedback mechanism with which a state can evaluate the effectiveness of its safety-related decisions and ensure that the implemented project is consistent with the state's safety goals and objectives. Additionally, and very importantly, the SMS can facilitate the examination, coordination, and improvement in state traffic records systems and other data bases.

NAGHSR strongly believes that the SMS must include all safety elements -- the roadway, the vehicle, and the driver. Since the overwhelming number of crashes are caused by driver error, it is extremely important that a state's SMS recognize the fact and incorporate driver behavior programs into its plan.

NAGHSR also strongly believes that the SMS process must involve all state agencies with a safety interest. Since highway safety problems are multi-faceted, as are safety countermeasures, it is essential that all state agencies participate early in the process and stay involved in the process over time. State highway safety agencies should participate in a state's SMS process, as should the state enforcement agency, emergency medical service or public health agency, motor vehicle administration, and department of transportation. Since state highway safety agencies are responsible for developing and implementing driver behavior programs for the state, they should play a central role in the SMS process.

We recommend that no single state agency be mandated to take the lead on SMS implementation. Rather, states should make that determination based on state needs, structures, and management

processes. In any case, the state highway safety agency must be an equal and active participant in the process.

NAGHSR was very pleased that FHWA concurred with our positions in its recent notice of proposed rulemaking on the management systems. NAGHSR has requested to be part of the process for drafting the detailed technical guidance which FHWA will issue on the safety management system. The Association is surveying states on the status of their SMS efforts, and we would be pleased to share that information with the Committee. State highway safety agencies are taking an active role in the SMS process at the state level, and in at least one state, the highway safety coordinator is leading the state's SMS effort.

VII. Section 159 Requirements

Section 1094 of ISTEA requires the Secretary to submit a study on state compliance with requirements for revocation or suspension of drivers' licenses. The FY 92 DOT appropriations bill added a new section 159 to 23 U.S.C. which requires states to revoke or suspend the driver's license of anyone convicted of a drug offense. States may "opt out" of these requirements if the Governor and the state legislature jointly certify that the state opposes a license suspension law. States that fail to comply with these requirements by October 1, 1993 lose 5% of their highway construction funds in the first year, and 10% in subsequent years.

To date, only one state (Virginia) has submitted drug suspension legislation and a plan for enforcing the legislation which has been approved by DOT. Florida's legislation has been approved, but part of its application still has not been approved. Wisconsin has submitted legislation which is still under review at DOT. Seventeen other states have decided to opt out of the federal requirements, and their certifications have been approved.

In nine states (some of whose applications are under review), the state legislatures are scheduled to adjourn by mid-late May. Legislatures in other states (Georgia, Mississippi) have already adjourned, but the states submitted draft certifications before adjournment. Kentucky's legislature does not meet this year but it will be reconvened for a special session later this year. Maryland's legislature passed an opt-out resolution before adjournment, but the Governor has not co-certified it yet.

In all likelihood, all (or nearly all) states will comply with the 159 requirements, although most will submit a certification to opt out. New Jersey -- the state whose license suspension law was the basis for the 159 requirements -- will comply by opting out. In NAGHSR's view, the Section 159 requirements, though well-intended, have not been successful.

Part of the difficulty is that the 159 requirements were too specific. Unless a state's license suspension law conforms with every aspect of the requirements, the law will not be approved.

The other part of the problem is that NHTSA's interpretation of the requirements is too stringent. For example, in order to comply with the enforcement regulations, states must be able to show how they currently exchange or plan to exchange information concerning out-of-state drug convictions, within state convictions, federal convictions, and juvenile convictions. Many states do not have easy access to this kind of information, and development of data exchange systems of the sort required by the legislation can take many years and substantial resources.

The 159 requirements would have been more successful had they been more performance-oriented, relied less on sanctions, and been more directly related to driving. Since the connection between the program's objectives and impaired driving were so tenuous, and since the requirements were viewed by

the states as coercive, few states were motivated to comply by passing the necessary legislation. Future highway safety legislative proposals could learn much from the lessons of the 159 program.

Mr. Chairman, this concludes my remarks. I will be pleased to answer any questions you may have about the statement. Thank you for the opportunity to address the concerns of the National Association of Governors' Highway Safety Representatives on the implementation of ISTEA.

MOTOR VEHICLE ACCIDENT STATISTICS**NEW JERSEY**

As a result of a concerted effort by states and local government and the initiatives of the National Highway Traffic Safety Administration, as well as safety-oriented organizations, there has been a downward trend in the rate of traffic fatalities, injuries, and severe accidents over the past twenty years. These efforts have concentrated on programs including public education and law enforcement as well as roadway and vehicle safety improvements.

The table presented here is based on data provided by the Governor's Highway Safety Representative's office. It presents the incidence and severity of fatal and injury traffic crashes, fatalities and fatality rates per one hundred million vehicle miles traveled over the past twenty years. There is a noticeable downward trend in motor vehicle related fatalities, injuries and fatality.

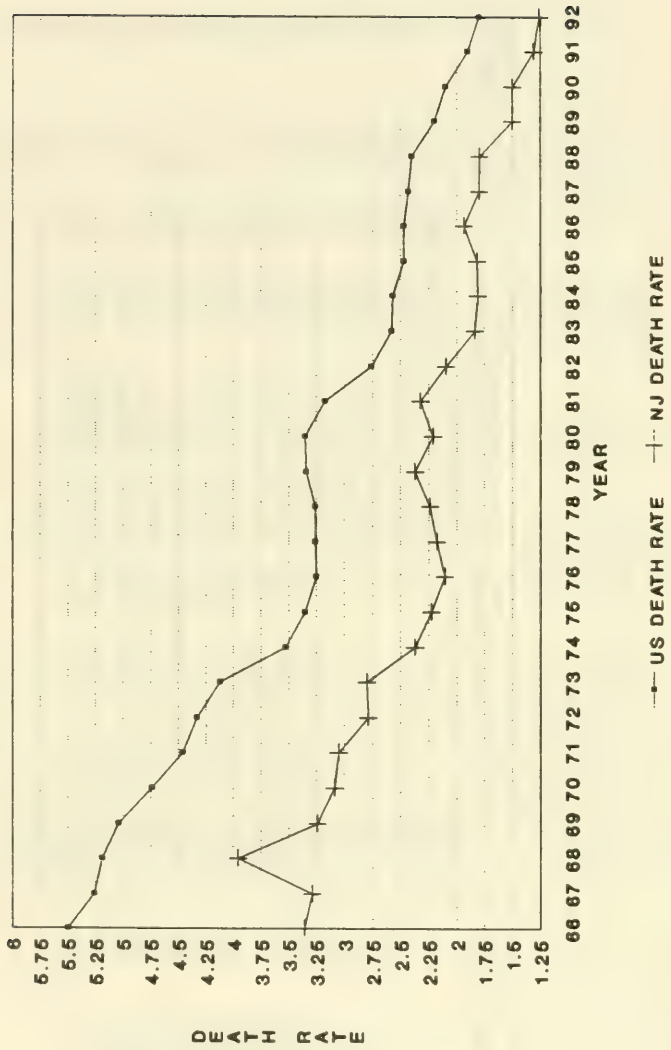
The first graph which is based on these statistics, compared each state's actual fatality rate per one hundred million vehicle miles to the national average from 1972 to 1991. All states have had a declining fatality rate over the past twenty years.

The second graph, based on those data, presents a comparison between actual and projected fatality rates for individual states through the year 2000. These rates were statistically determined using Ordinary Least Square (OLS) regression models and were based on all available statistics over the past twenty years.

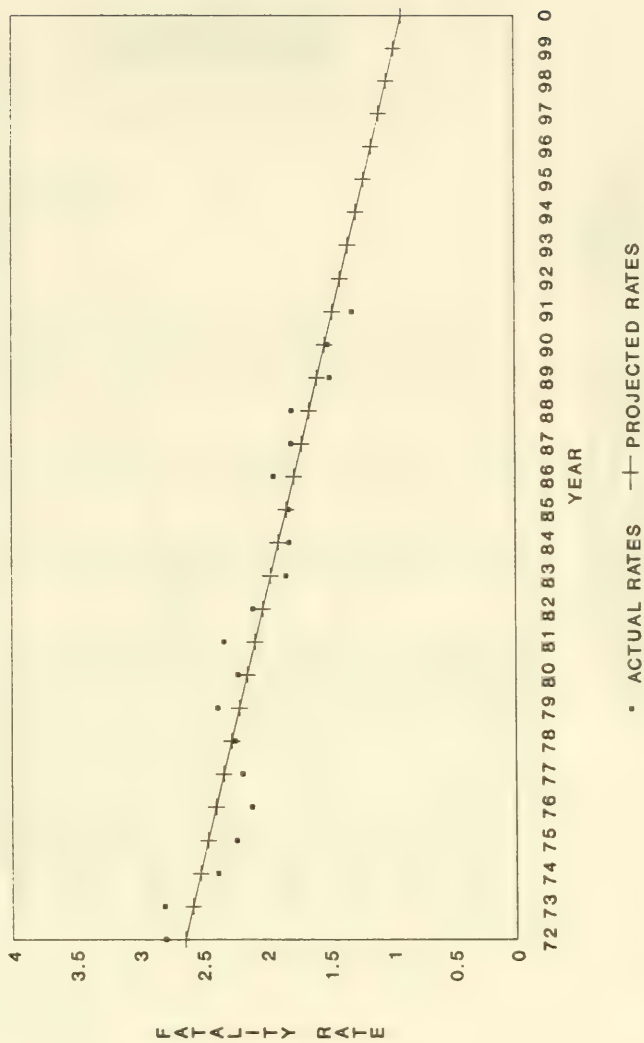
The third graph is a comparison of estimated fatalities from 1980 through 2000 for two scenarios. The first scenario assumes no significant highway, vehicle and traffic safety improvements since 1966. The other scenario takes into account the improvement since the national traffic safety program was enacted in 1966. The objective of the comparison is to assess the benefit of those improvements. The difference between these estimates represents an estimate of 13,721 lives saved for New Jersey because of the positive impact of these programs. This represents an estimated \$6.5 billion in total social cost savings for this period. This is a conservative figure. The societal cost per fatality was estimated to be only \$270,000 in 1980. This amount was increased 5.2 percent per year up to 1992 which reached a cost of \$500,000. This is less than the \$700,000 per fatality estimated by NHTSA in 1992. An increase of 2 percent annually was estimated for the year 1993 through the year 2000.

STATE	NEW JERSEY	FATAL ACCIDENTS	FATALITIES	INJURY ACCIDENTS	INJURIES	PDO ACCIDENTS	LICENSED DRIVERS	REGISTERED VEHICLES	POPULATION	V. M. I.	FATALITY RATE	UNITED STATES FATALITY RATE PER MWT
YEAR	TOTAL CRASHES											
1965			1,095				3,426,669	3,077,962	7,183	32,648	3.35	5.3
1966			1,127				3,567,521	3,235,063	7,198	33,562	3.36	5.5
1967			1,168				3,631,529	3,326,498	7,204	35,355	3.29	5.26
1968			1,352				3,790,879	3,459,196	7,289	34,167	3.96	5.19
1969			1,272				3,925,259	3,615,418	7,286	39,283	3.24	5.04
1970		1,151	1,142				4,099,913	3,744,201	7,298	41,463	3.08	4.74
1971		1,177	1,279				4,201,985	3,920,759	7,303	43,289	3.05	4.46
1972		1,177	1,319				4,259,612	4,068,304	7,322	47,083	2.79	4.33
1973		1,202	1,314				4,472,550	4,307,602	7,372	48,167	2.80	4.12
1974	210,194	1,038	1,121	79,428	117,637	129,728	4,550,740	4,426,271	7,408	47,244	2.37	3.53
1975	219,526	957	1,079	81,702	119,335	136,867	4,640,578	4,427,739	7,350	48,445	2.23	3.35
1976	230,382	946	1,056	82,947	120,713	146,489	4,651,468	4,527,758	7,358	50,081	2.11	3.25
1977	250,013	1,003	1,109	90,122	131,533	158,888	4,755,519	4,498,441	7,349	50,893	2.18	3.26
1978	264,244	1,046	1,160	90,413	133,362	172,785	4,814,851	4,644,382	7,352	51,805	2.24	3.26
1979	231,768	1,075	1,166	88,895	132,264	141,798	4,902,802	4,816,808	7,358	49,140	2.37	3.34
1980	220,226	1,050	1,148	82,963	122,796	136,253	4,908,897	4,867,439	7,365	51,841	2.21	3.35
1981	221,873	1,070	1,193	83,880	125,300	136,923	5,027,110	4,802,621	7,406	51,328	2.32	3.17
1982	221,905	890	1,086	81,920	121,513	138,995	4,934,746	5,022,105	7,427	51,802	2.10	2.76
1983	213,842	892	1,086	80,847	120,589	132,103	4,900,221	5,022,130	7,464	52,217	1.84	2.58
1984	223,052	883	947	86,147	128,926	136,022	4,851,046	5,022,130	7,511	52,312	1.81	2.57
1985	244,240	908	988	91,356	136,401	151,978	4,909,366	5,036,366	7,561	54,386	1.82	2.47
1986	264,732	975	1,070	96,770	146,598	166,987	5,267,489	5,395,469	7,619	55,349	1.93	2.47
1987	281,018	929	1,023	99,047	151,694	181,042	5,296,386	5,211,800	7,672	57,017	1.79	2.43
1988		966	1,051				5,460,192	5,348,591	7,718	58,671	1.49	2.4
1989		814	891				5,615,102	5,636,330	7,721	59,898	1.49	2.2
1990			886				5,584,727	5,652,382	7,730	59,923	1.50	2.1
1991			784							59,797	1.31	1.9
			768							60,992	1.26	1.8

NEW JERSEY VS NATION 1966-1992
FATALITY RATE PER 100 MILLION
VEHICLE MILES

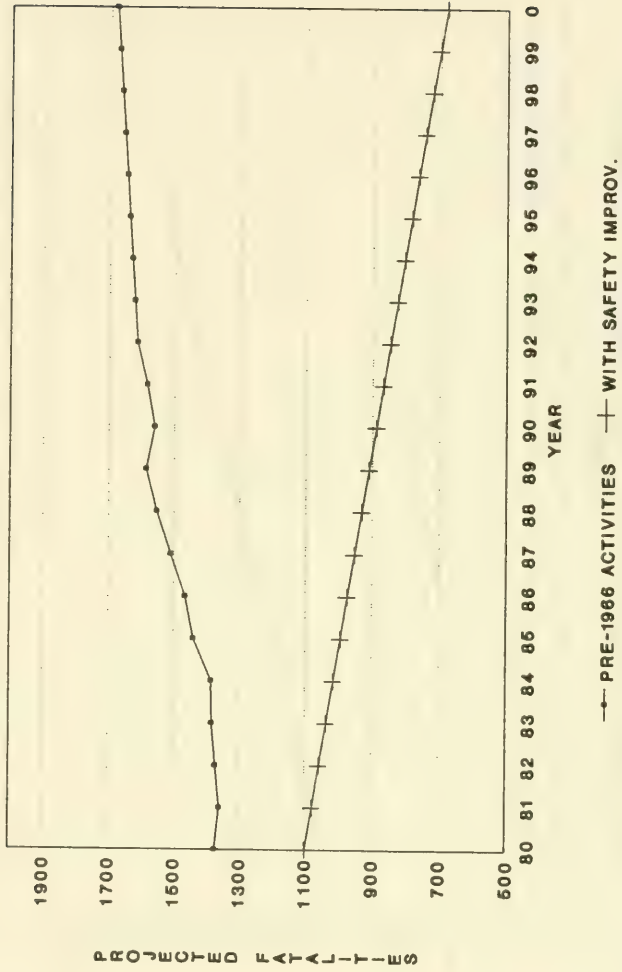


NEW JERSEY ACTUAL AND PROJECTED FATALITY RATES 1972-2000



FATALITY RATE PER MVMT
NJ DHTS 3/93

NJ PROJECTED FATALITIES WITH HIGHWAY AND
VEHICLE SAFETY IMPROVEMENTS SINCE 1966
VS. PRE-1966 HIGHWAY SAFETY ACTIVITIES



PROJECTIONS USING OLS REGRESSION
NJ DHTS 3/93



National Association of Governors' Highway Safety Representatives

June 2, 1993

The Honorable Nick Joe Rahall II
2269 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

93 JUN -3 PM 4:26

Dear Chairman Rahall:

The National Association of Governors' Highway Safety Representatives (NAGHSR) supports the redirection provisions of Section 153 of the Intermodal Surface Transportation Efficiency Act of 1991. We urge your opposition to H.R. 799 and other legislation which would weaken or delay redirection.

NAGHSR is a national association which represents state highway safety agencies. Its members are appointed by the Governor of each state, and they are responsible for administering federal highway safety grant funds and managing the state highway safety program.

In our May 4 testimony before the Surface Transportation Subcommittee, the Association stated that it supports the 153 provisions for three reasons: mandatory safety belt and motorcycle helmet use laws work; redirection is an acceptable alternative to the more punitive traditional sanctions; and redirection has been effective in motivating states to pass mandatory use laws.

An additional argument against the 153 provisions, not addressed in NAGHSR's statement, was raised at the hearing. It was suggested that states have the right to regulate their citizens as they see fit and that the 153 penalty provisions, particularly as they apply to mandatory motorcycle helmet use laws, are an unwanted and unnecessary infringement of states' rights. NAGHSR feels that such arguments are misleading and without merit.

Congress frequently preempts states' regulatory authority where there is a compelling health or safety problem and when there are effective means for solving that problem on a national basis. Federal highway design standards for the National Highway System, federal truck size and weight regulations, and federal hazardous materials regulations are but three examples of safety-related preemption. The Clean Water Act, the Clean Air Act, the Resource Conservation Recovery Act, and the Safe Drinking Water Act are all based on federal health and safety standards that preempt state standards unless the state standards are stricter than the federal laws. In each of those instances, Congress has exercised its legitimate legislative responsibility to preempt weaker or ineffective state laws where it was in the public interest to do so.

In the past, the House Public Works Committee has unhesitatingly taken action when the members perceived a safety problem for which there are effective, viable solutions. NAGHSR believes that 3,000 motorcycle deaths in 1991 constitute a significant public health and safety problem. We also believe that there is clear and convincing evidence, as shown in numerous studies, that motorcycle helmets are the most effective way to prevent fatal and serious motorcycle injuries.

We therefore urge the House Public Works and Transportation Committee to retain the penalty portions of the 153 program, as authorized.

Sincerely,

James A. Arena
Director, New Jersey Division of Highway Traffic Safety
Chair, NAGHSR

James Arena
Chair
Bette Thies
Vice Chair
William Leighty
Treasurer
Susan Bryant
Secretary
Barbara L. Harsha
Executive Director

Testimony of American Motorcyclist Association

JIM BENSBERG, WASHINGTON REPRESENTATIVE
before the

House Subcommittee on Surface Transportation

*“Implementation of the Intermodal
Surface Transportation Efficiency Act of 1991”*

May 4, 1993

The AMA on behalf of its 200,000 members nationwide, is pleased to present testimony today regarding the implementation of the recently enacted P.L. 102-240, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In general, there are several aspects of this legislation which agree with our members' views, and, several which do not.

Section 402 - Uniform Guidelines

The AMA applauds Congressional efforts which resulted in positive language in Title II of ISTEA which reads "... uniform guidelines (for the States) shall include programs. . . (4) to reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, . . ." In our view, there is no better way to address the issue of motorcycle safety than by attempting to influence behavior to *avoid accidents*. Consistent with that view AMA has undertaken a joint project with NHTSA which strives to heighten awareness of motorcycles in today's traffic mix across the nation.

Use of HOV Lanes by Motorcycles

In the true spirit of intermodalism, Congress closed a significant loophole in federal law by requiring all states receiving federal funding for High Occupancy Vehicle lanes to open those HOV lanes to single occupant motorcycles. This has had the effect of bringing all states employing these lanes into uniform compliance. It has also greatly enhanced the relative safety of motorcycling commuters by allowing them to travel on safer, less congested traffic lanes. This, in turn, will encourage the use of a light weight, fuel efficient and easy-to-park vehicle. By encouraging the use of motorcycles as alternative commuter vehicles, Congress has thus helped reduce wear and tear on our bridges and highways, decreased fuel consumption and aided the plight of daily travellers into and from our major metropolitan areas.

Penalties Assessed to States Failing to Enact Compulsory Helmet Laws

Our members have long opposed efforts by states, aided by the federal government, to impose mandatory helmet laws for riders of all ages. The debate is not whether *helmet use* is desirable; in our view the advantages of helmet use far outweigh any possible disadvantages. Rather, our members believe strongly that helmet use should remain an individual decision by the motorcyclist. Passage of ISTEA effectively removed this debate from the hands of state legislators by imposing a "carrot and stick" approach. However, it is interesting to note, that fully 29 states are out of compliance with ISTEA because they have not passed or put into effect by September 30 of this year a full mandatory helmet or seatbelt law. This collective action speaks volumes, and several state officials have expressed their displeasure over having to conform to the wishes of Congress.

The "stick" of transferring highway funds to safety accounts is viewed by many as punitive legislation which offers no real benefit to the ultimate consumer, in this case, the

motorcyclist. The legislation is often seen as vague and confusing since nowhere in the applicable section of P.L. 102-240 is there a definition of a "helmet." Conversely, there is a definition of "safety belt," but motorcyclists and state enforcement officials are struggling to understand which helmets, previously and currently offered for sale, meet applicable federal DOT standards. Further, NHTSA has applied a far different standard for enforcement of states' helmet laws because it calls for *primary enforcement* rather than the allowable secondary enforcement of seatbelt laws. This double standard does not appeal to most folks' sense of fair play.

Therefore, in regard to this provision in ISTEA, we at AMA urge the Public Works and Transportation Committee to schedule a hearing at the earliest possible time to review the merits of H.R. 799 sponsored by Representative Snowe. This bill would repeal only that section of ISTEA which has removed our members from the democratic process at the state level. By repealing the penalties which force states to pass unpopular and punitive legislation H.R. 799 would return the debate to statehouses around the country without binding those bodies in advance.

Motorcycle Accident Victims as a "Social Burden"

Proponents of mandatory helmet laws argue that injured motorcyclists do not pay their hospital bills and have to rely on taxpayer dollars to pay for their health care. The implication is that motorcyclists constitute a "social burden" of some sort. This is not true.

In the past, there have been several studies that have attempted to portray injured motorcyclists as a social burden¹. One of the most notorious studies was conducted at Harborview Medical Center in Seattle, Washington in 1988. The researchers reported that 63.4 percent of the injured motorcyclists in the trauma center relied upon public funds in order to pay their medical bills. The authors of this study concluded that a mandatory helmet law should be enacted to decrease the cost to the public. The Harborview study was subsequently used to help enact the helmet law in Washington state.

What the researchers at Harborview failed to report, and what only became clear after the administrator of the trauma center, David Gitch, had testified before the Washington House Ways and Means Subcommittee on Appropriations, was that 67 percent of the *general*

¹ The National Highway Traffic Safety Administration has also produced a document entitled "A Model for Estimating the Economic Savings from Increased Motorcycle Helmet Use" but they state in the introduction that, "The resulting estimate should provide a reasonable 'order of magnitude' indicator of safety and economic benefits that could result from increased motorcycle helmet use. It should not, however, be characterized as a precise prediction of these savings." The figures contain many indirect costs and in no way reflect any accurate measure of direct costs to the state.

patient population was also dependent on taxpayer dollars. Motorcyclists, in fact, relied less upon public funds than the general patient population. Clearly, there are problems evident in our nation's health care system, but these problems should not be attributed solely to a handful of injured motorcyclists who are just as likely to pay their hospital bills as anyone else.

The methodological flaws that were inherent in the Harborview study are also characteristic of the other "social burden" studies like Harborview². When 67 percent of the general patient population is not paying their hospital bills it becomes rather simple to identify a category of inpatients whose activity you do not approve of and define them as a "social burden."

In order to address the previous inadequacies evident in studies like Harborview, the University of North Carolina's Highway Safety Research Center compared injured motorcyclists to other categories of injured road-users. The researchers looked at eight level I and II trauma centers and studied over 800 injured motorcyclists, 9000 motor vehicle crash victims, and 26,540 other inpatients. These studies reported that:

- Injured motorcyclists were just as likely to be privately insured as other motorists³.
- The cost of treating injured motorcyclists was lower than other road trauma victims.
- 35.1 percent of the injured motorcyclists had suffered a head injury compared to 41.8 percent of the other head trauma victims.
- "THERE WERE NO SIGNIFICANT DIFFERENCES IN OVERALL MORTALITY, MEAN TRAUMA SCORES, MEAN HOSPITAL STAYS, MEAN HOSPITAL CHARGES OR PERCENTAGE OF CASES DISCHARGED TO A REHABILITATION FACILITY IN HELMETED AND UNHELMETED PATIENTS, EITHER BEFORE OR AFTER STRATIFICATION."⁴ (emphasis added)

² Studies examined a small sample of injured motorcyclists, lacked a comparison to other injured patient categories, incorporated inappropriate comparison populations, failed to account for helmet use, and/or failed to differentiate between head injury and other types of injury.

• An Examination of Motorcyclist Injuries and Costs Using North Carolina Motor Vehicle Crash and Trauma Registry Data, Jane C. Stutts.

• The Association of Helmet Use With the Outcome of Motorcycle Crash Injury When Controlling for Crash/Injury Severity, Robert Rutledge.

- Motorcycles comprise only 9/10 of 1 percent of all the crash involved vehicles nationwide.^{***} Given these numbers it is hard to understand how motorcyclists can be construed as a "social burden" of some sort.

There is a problem with both insurance availability and spiraling health care costs in this country. The GAO estimates that by the year 2000 we will be spending 15 percent of our Gross National Product on health care, an amount comparable to our defense budget of recent years. However, these problems are not the fault of America's motorcyclists.

Motorcyclists have a vested interest in their own safety. Ultimately, the issue is not the efficacy of helmet use but a question of whether adults should be free to make personal decisions regarding their own safety. A recent Motorcycle Industry Council survey identified the average motorcyclist as being 31.5 years of age, married, college educated, with an income slightly in excess of \$33,000 a year. In short, motorcyclists have the faculties necessary to evaluate risks and make decisions in regard to their own safety.

GAO Report on Grants and Penalties

In a recent report (GAO/RCED-92-106) the General Accounting Office outlined some salient concerns about the practical effects of the language in ISTEA requiring states to pass mandatory helmet laws. "The act's connection between safety belts and motorcycle helmets may limit states' financial incentives to improve safety belt efforts. . . Since more than 10 times as many people have died annually in car and light truck crashes than in motorcycle crashes for the last two years for which data are available, it would not appear productive to condition state incentives for safety belt efforts on what the states may be able to do with motorcycle helmets."

The Good News: Motorcycle Fatalities are Down

According to the latest Fatal Accident Reporting System figures for 1991, motorcycle related fatalities have dropped dramatically since the high water mark of 1980. This precipitous decline represents a 45 percent drop in fatalities and is, remarkably, a 20-year-low. Preliminary figures from 1992 show a similar decline on the order of 17 percent as compared with 1991. Motorcyclist deaths as a percent of all motor vehicle deaths has dropped 40 percent from 1981 to 1991, according to the Insurance Institute for Highway Safety. No other motor vehicle group has registered such an admirable decline in traffic fatalities during the past decade. This data serves to highlight that far more than helmet laws have been responsible for this amazing phenomenon. It is particularly remarkable in light of the recent upswing

^{***} U.S. DOT, General Estimates System, 1990.

in 1991 and again in 1992 of new motorcycle sales nationwide and the increased vehicle miles travelled by motorcyclists during the years 1980 to the present.

Need for Updated Research

It has been over 14 years since USC Professor Harry Hurt completed his widely quoted report on the causes of motorcycle accidents and fatalities. For those not familiar with this landmark study funded by NHTSA, over 900 motorcycle accidents were investigated thoroughly to determine primary and secondary causes of motorcycle crashes. It is our view that in order to advance the cause of motorcycle safety with the goal of reducing accidents and thus injuries and fatalities current research must be employed. Many factors have changed significantly since the "Hurt Report" was completed and we believe that new research is needed and warranted. We note with interest that DOT Secretary Peña has included \$50 million in the President's FY '94 budget for "grant programs to encourage states to enact safety belt and motorcycle helmet use laws and measures to counter drunk and drugged driving." We respectfully suggest that a small fraction of that money could be better spent on motorcycle accident research.

Need for Congressional Recognition of May as Annual "Motorcycle Awareness Month"

While we realize it is not generally within the purview of the Public Works and Transportation Committee to designate days, weeks or months in a particular way, we would naturally welcome the Committee's leadership in urging the House Post Office and Civil Service Committee to commemorate the month of May as "Motorcycle Awareness Month." This, we believe would be consistent with similar efforts to recognize "Boater Safety Week," "Child Safety Seat Week," etc.

National Recreational Trails Trust Fund

This subject of ISTEA has been addressed earlier in this series of hearings by the Coalition for Recreational Trails, to which AMA belongs as a charter member. However, it is our desire to laud this Committee's efforts to include a provision in ISTEA which returns a small portion of gasoline taxes paid by off-highway vehicle recreationists to fund recreational trails for all Americans.

Conclusion

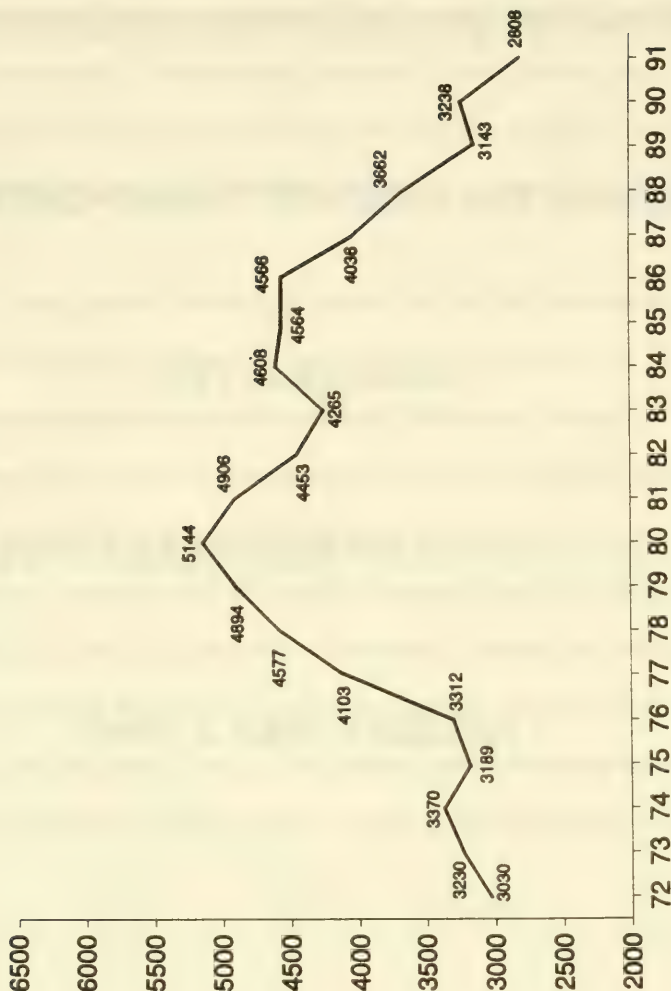
Passage of ISTEA has brought a mixed bag of blessings and curses to the motorcycle community in the United States. We remain committed at AMA to advancing both the relative safety and the practicality of operating a motorcycle on our nation's highways and

byways. Recognition of motorcycles as legitimate HOV worthy vehicles and making a priority of motorcycle safety programs have been welcome messages from Congress. Also, returning a portion of gasoline taxes from the Highway Trust Fund is viewed very positively by our members who travel off-highway on their motorcycles.

However, as we have since 1966, our members exhort us to oppose the mandatory helmet sanctions which were passed in ISTEA and codified by NHTSA. The "problem" of motorcycle safety, as evidenced by this testimony, is *decreasing rather than increasing*. We remain confident we can extend our recent gains in motorcycle safety without the heavy hand of the federal government requiring the States to pass unpopular and punitive helmet laws.

National Highway Motorcycle Fatalities

1972-1991



Source: Fatal Accident Reporting System (NHTSA)

SENATOR BEN NIGHTHORSE CAMPBELL

BEFORE THE SURFACE TRANSPORTATION

SUBCOMMITTEE

U.S. HOUSE OF REPRESENTATIVES

TUESDAY, MAY 4, 1993

Mr. Chairman, I appreciate the opportunity to appear before the committee. I look forward to working with you and your colleagues during the coming months as we consider proposals that may alter our transportation policies.

The fight over mandating motorcycle helmet use has a long and complicated history. In 1966, the U.S. Department of Transportation threatened to withhold millions of dollars in highway funds from the states failing to enact mandatory helmet laws. Every state except California eventually complied. In 1976, Congress revoked DOT authority to impose fiscal sanctions against states that refused to enforce helmet laws. Nearly half the states soon repealed their laws or amended them to exclude most adults. Currently, 29 states have no mandatory helmet statutes or statutes that exclude adult riders. My own state of Colorado is one of the

last holdouts, currently we have no mandatory helmet regulations.

Now, with the passage of the Intermodal Surface Transportation Efficiency Act, PL 102-240, in 1991, our states are facing severe penalties unless they buckle under to the federal government's blackmail tactics.

As my colleagues may know, ISTEA included provisions requiring states to have mandated safety belt and motorcycle helmet laws. Under ISTEA, each state is required to have both seat belt and helmet laws in effect before October 1, 1993. If a state does not have both in effect by this deadline the state will be required, beginning Oct. 1, 1994, to shift 1.5% of its federal highway funds in three programs, the National Highway System (NHS), the Surface Transportation Program (STP), and the Congestion Mitigation and Air Quality Improvement Program (CMAQ), to section 402 safety programs. If by September 30, 1994, a state has not enacted both seat belt and helmet laws the state will be required to shift three percent of its federal highway

funds in the NHS, the STP and the CMAQ to safety programs.

Though 29 states are facing severe penalties if they don't comply with these federal mandates, a number of state legislatures have recently considered mandatory helmet bills and decided against them:

- ◆ In my state of Colorado, on February 2, 1993, the Senate Transportation Committee voted 6 - 1 to kill the mandatory helmet bill introduced by Senator Bill Owens.
- ◆ In Arizona, a mandatory helmet bill was discussed in committee without a vote being taken. However, members of the of the committee were leaning heavily towards killing the bill. Following the committee hearing, the bill's sponsor called in to a local radio talk show and stated that he would not pursue the matter any further.

- ◆ In Montana, on February 19, the Senate Highway and Transportation Committee killed a mandatory helmet bill by a vote of 8 - 0.
- ◆ In Wyoming, a mandatory helmet bill was never filed. Prior to the opening of Wyoming's session, a steering committee recommended that no bill be introduced.

As the chart on the following page shows, these states are facing relatively heavy penalties for failure to comply with the federal mandates in ISTE A but are sticking with their convictions and are not passing mandatory helmet laws.

IMPACT OF SECTION 153 PENALTIES ON THE 29 STATES CURRENTLY NOT IN COMPLIANCE

Estimated amount of penalties under Section 153 transfer for states not having motorcycle helmet and automobile seatbelt use laws in effect prior to 10/1/93 (Provided by the Federal Highway Administration - FHWA)

<u>STATE</u>	<u>FY95--1.5%</u>	<u>FY96 -- 3%</u>
Alaska	\$ 2,635,202	\$ 5,270,405
Arizona	1,715,015	3,430,030
Colorado	1,906,469	3,812,939
Connecticut	2,392,626	4,785,252
Delaware	729,713	1,459,426
Hawaii	1,387,160	2,774,319
Idaho	1,071,799	2,143,597
Illinois	5,331,483	10,662,966
Indiana	2,805,988	5,611,996
Iowa	1,874,501	3,749,002
Kansas	1,560,880	3,121,761
Kentucky	2,004,783	4,009,566
Maine	848,603	1,697,206
Massachusetts	1,641,854	3,283,708
Minnesota	2,155,072	4,310,145
Montana	1,341,606	2,683,213
New Hampshire	926,752	1,653,504
New Mexico	1,312,859	2,625,719
North Dakota	1,071,279	2,142,557
Ohio	4,279,412	8,558,824
Oklahoma	1,727,025	3,454,050
Rhode Island	701,575	1,403,151
South Carolina	1,780,707	3,561,413
South Dakota	1,094,402	2,188,804
Utah	1,037,337	2,074,675
Vermont	703,094	1,406,189
West Virginia	1,182,446	2,364,891
Wisconsin	2,283,100	4,566,199
Wyoming	1,026,878	2,053,757

NOTE: *FY 1995 and FY 1996 percentages are based on FHWA estimates of State apportionments for FY 1993. The actual percentages for FY 1995 and FY 1996 will be based on that year's apportionment which will vary from the amounts above.*

Throughout my career in politics, I have always strived to protect the interests of communities by allowing them and their states to make the important decisions on how their affairs should be run. On issues as diverse as gun control and highway speed limits, I have always stuck with my philosophy that each state and each community should, to the best of our ability, be allowed to make its own policy decisions. In short, I believe the policies embodied in ISTEA, policies that blackmail states into complying with federal mandates, are terribly misguided.

I firmly believe, and I know the Committee shares my beliefs, that we must do everything we can to make our roads and highways safer. There are entirely too many fatalities and injuries on our highways. I know that proponents of mandatory helmet laws believe their efforts will increase highway safety. It evident, however, they this belief is mistaken.

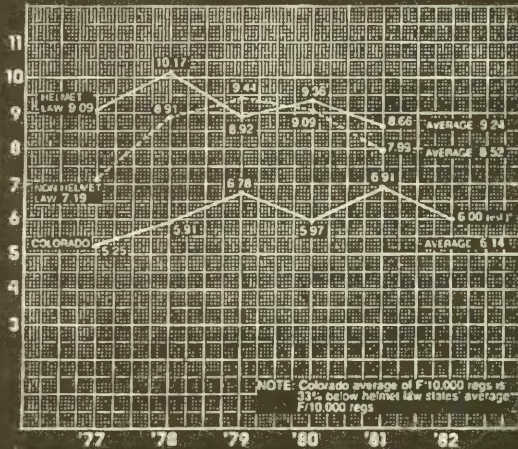
In the past decade, motorcycle fatalities have decreased 38 percent while accidents have plummeted 41 percent. These figures are particularly impressive in light of the fact that the Federal Highway Administration estimates that the average vehicles miles traveled by motorcyclists has increased 85 percent since 1975. These statistics are unmatched by any other category of road user -- passenger or commercial.

Convincing proof of the failure of mandatory helmet laws to improve highway safety can be obtained by comparing mandatory-helmet-law states with those states without helmet laws. Of the top 12 states with the best motorcycle safety records (fatalities per 10,000 registrations), only one has a helmet law. On the other hand, fully half a dozen states with worst safety records are helmet-law states.

Colorado, as the graph below shows, has a motorcycle fatality rate 33 percent below the average for states with mandatory laws for all riders. Comparing states without mandatory helmet laws as a

whole, figures show that for the 14-year period 1977-1990, states with mandatory helmet laws had 12.5 percent more accidents and 2.3 percent more fatalities that non-mandatory states.

**Fatalities per 10,000 registrations
A comparison between Colorado,
Helmet law states and Non-helmet law states**



Source: American M.C. Assn and M.C. Safety Foundation annual compilations of FMVSS data cross-checked with states.

Notes:

Helmet law states - those with a compulsory use helmet law for all motorcycle users.

Non-law states - those which repealed their compulsory use laws between 1977-80.

All evidence clearly indicates that the most effective way to reduce motorcycle accidents and motorcycle fatalities is through comprehensive education programs. The national average of motorcycle fatalities per 100 accidents is 2.95. States with rider education programs and no helmet laws, however, have the lowest average death rate, 2.56 fatalities per 100 accidents. States with mandatory helmet laws and no rider training programs, on the other hand, have a significantly higher rate of 3.09 fatalities per 100 accidents.

Statistics show that a large proportion of riders involved in accidents are young, inexperienced and lack training of any sort. Mandatory helmet laws cannot protect these riders.

Police accident reports indicate that well over 45 percent of motorcyclists involved in accidents did not have a motorcycle license, 92 percent did not have any formal training and more than

half had less than six months riding experience. 62 percent of the accidents and 50 percent of the fatalities involved riders between the ages of 17 - 26. Clearly, mandating helmet use will not address the real problem of rider inexperience and lack of training. I believe that providing support to states and local communities to provide motorcycle training programs would be a much more effective means of improving motorcycle safety on our roads and highways.

Yet another factor that should be considered before the penalties in ISTEA go into effect is the economic consequences of these mandates.

In California, after recently reimposing mandatory helmet laws, the state has collected statistics showing that its new law has cost the state a great deal of money. After the mandatory helmet law went into effect in 1992 new motorcycle registrations, dropped from 45,068 to 12,514. The drop in new sales cost the state around \$10 million in sales tax on new motorcycles, around \$40 million in lost sales taxes on used motorcycles and accessories and another \$6.4

million for lost registration fees. In total, California's mandatory helmet law cost the state over \$56 million.

Other states have felt similar effects. When Nebraska adopted a mandatory helmet law in 1989, new motorcycle sales dropped 40 percent. In Oregon, which also recently adopted similar legislation, new motorcycle sales have dropped 35 percent.

In closing, I want to strongly encourage my colleagues to reconsider the position Congress took in ISTEA. While the motivation to increase the safety of motorcyclists is a noble one, it is clear to me that the decision to mandate helmet use was made by individuals who do not ride.

STATES WHERE LEGISLATIVE OR EXECUTIVE ACTION HAS BEEN TAKEN TO DEFEAT MANDATORY HELMET LAWS

Arizona	After a hearing in House Transportation Committee the sponsor has publicly stated he feels the bill is dead and will not push for a vote in Committee (2/2/93)
Colorado	Defeated in Senate Transportation Committee 6-1 (2/2/93)
Connecticut	Defeated in Joint Transportation Committee 14-9 (3/15/93)
Hawaii	Defeated in State Transportation Committee 6-4 (2/17/93)
Illinois	State Transportation Committee refuses to take action on SB69 (3/23/93)
Kansas	Defeated in Senate Transportation & Utility Committee 6-4 Defeated four attempts to offer floor amendments on helmet law to other bills the House was taking action on After Senate amends helmet law to HB2452 House repeatedly rejects Senate amendment, final vote to non-concur is 76-16 to strip helmet law amendment Senate votes 39-1 and House votes 80-42 to pass HB2452 without helmet law amendment (4/6/93)
Minnesota	Defeated in House Transportation Committee 15-11 (3/24/93)
Montana	Defeated in State Highways and Transportation Committee 8-0 (2/20/93)
New Hampshire	Defeated on House floor on an overwhelming voice vote (3/16/93)
North Dakota	Defeated on Senate floor 35-14 (2/1/93)
Oklahoma	Sponsor withdraws bill when chairman of the Public Safety and Corrections Committee offers amendments during Committee action (2/15/93)
Rhode Island	Defeated in House Health, Education and Welfare Committee 11-0 (4/6/93)
South Dakota	Defeated in House Transportation Committee 7-6 (2/9/93)
Wisconsin	Gov. Thompson does not include helmet law requirement in his 1993 to 1995 budget. Makes provisions to transfer federal penalty money to safety instead. (2/12/93)

STATES PAST BILL FILING DEADLINES WITHOUT MANDATORY HELMET LAWS BEING INTRODUCED

Idaho Indiana Maine Utah Wyoming

STATES WHERE NO MANDATORY HELMET LAW BILLS HAVE BEEN INTRODUCED

Delaware New Mexico Ohio South Carolina

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Committee on Public Works

Subcommittee on Surface Transportation

Hearing on Implementation on the
Intermodal Surface Transportation Efficiency Act of 1991

Testimony of Congressman Jim Cooper

Tuesday, May 4, 1993

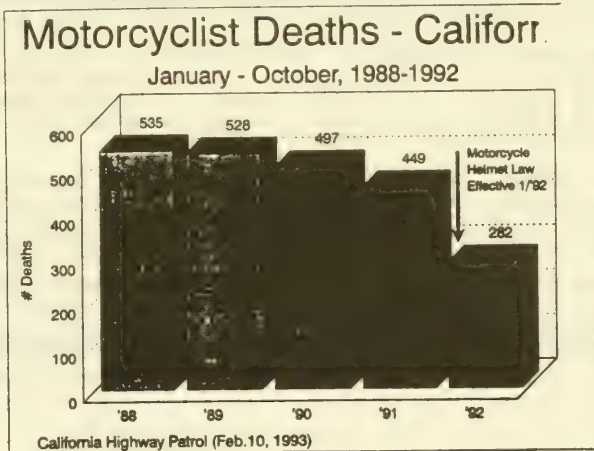
Good morning Mr. Chairman. I appreciate this opportunity to testify before you and the other members of committee regarding Section 153 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) which has been targeted for repeal.

Section 153 encourages -- but does not require -- states to enact safety belt and motorcycle helmet use laws. States with both laws are rewarded with incentive grants. States that do not have both laws in place by September 30, 1993, do not lose a penny of federal funds. The only mild requirement is that a small part of their federal highway funds are **redirected** into their own state highway safety programs.

Section 153 is a good law. Letting it remain in place would probably save more taxpayer dollars than any other "health care reform" law Congress passes this year.

Why did we enact Section 153 in the first place? Simply put -
- this law saves lives and money.

California's experience proves it.



Within the first ten months of passing its helmet law, California's motorcycle fatalities decreased by 37% compared with the same period in the previous year. And although opponents of Section 153 predicted an increase in non-fatal injuries, California experienced a dramatic 19% drop in injuries.

Section 153 is working:

Since Section 153 became law, five states (Maryland, Nebraska, North Dakota, Rhode Island and West Virginia) have adopted safety belt or all-rider motorcycle helmet use laws.

This does not include states like California, Arkansas, Alabama, and Delaware which enacted either helmet or safety belt laws in 1991 when ISTEA was under debate. The provisions in Section 153 were specifically mentioned in those state legislatures as an incentive for enacting the bills.

The fact is, without Section 153, we would never have seen these changes.

Section 153 is not a federal mandate. States which choose not to have helmet and seatbelt laws do not lose a penny of federal funds. The only requirement is that these funds be used for sensible highway safety programs, such as anti-drunk driving programs, traffic safety law enforcement, emergency medical services, speed enforcement and pedestrian safety.

In every state, the need for federal funds for highway safety programs far outstrips the ability of the state to provide those funds. Last year in New Jersey, for example, the state highway safety office received requests for projects totaling \$39 million, while their grant apportionment was only \$4 million.

Section 153 was written in cooperation with state legislators, and there is growing support for the law among local organizations.

In Senator Campbell's own state, the Colorado Motorcycle Helmet Coalition is only one of 34 state organizations that have endorsed Section 153. A recent survey of Colorado voters indicates that 79% support an all rider motorcycle helmet use law. Safety belt laws are already in place in Colorado.

In summary, Mr. Chairman, those of us who support these life-saving laws believe the facts speak for themselves: safety belt and all-rider motorcycle helmet laws work, and Section 153 is a fair approach to encouraging states to enact these life saving measures.

The truth is simple: repealing or weakening Section 153 will not only cost additional health care dollars, it will cost lives and increase traumatic injuries.



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**Statement
of
Wayne T. Curtin
Vice President of Government Relations
Motorcycle Riders Foundation
before
the
House Public Works And Transportation Committee
Subcommittee on Surface Transportation
on
Implementation of the Intermodal Surface
Transportation Act of 1991
May 4, 1993**

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P.O. Box 1808, Washington, D.C. 20013-1808 • (202) 546-0983 • FAX# (202) 546-0986

Mr. Chairman and members of the subcommittee, I am Wayne Curtin, Vice President of Government Relations for the Motorcycle Riders Foundation (MRF). I Thank-You for this opportunity to address the impact of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) on motorcyclists. MRF is a national motorcyclists' rights organization which is supported by and represents the interests of individual members, small business marketing to motorcyclists and state motorcyclists' rights organizations throughout the country. The combined membership of these organizations is over 150,000 motorcyclists.

HOV ACCESS, MOTORCYCLE SAFETY, SYMMS TRAILS ACT

I would like to open by saying MRF is pleased with results of ISTEA in the area of motorcyclists having use of HOV lanes. As a result of the provisions of SEC. 1056, motorcyclists are now able to use all HOV lanes built using federal funds, providing a safer and more efficient commuting environment for motorcyclists. MRF is also pleased with SEC. 2002 of ISTEA including motorcycle safety in the priority highway safety programs at the National Highway Traffic Safety Administration (NHTSA). In addition, even though MRF deals mainly with the concerns of street/road riding motorcyclists, MRF is supportive of the inclusion of the Symms National Recreational Trails Act -- SEC. 1301 -- in ISTEA and encourages this subcommittee to help secure the full funding authorized in ISTEA.

SEC 1031 USE OF SAFETY BELTS AND MOTORCYCLE HELMETS

However, MRF has one major objection to ISTEA we hope the subcommittee will address and correct. The provisions of SEC. 1031 -- Use Of Safety Belts And Motorcycle Helmets -- raise concerns in the area of the incentive grants and raise strong objections in the area of penalties on states that do not enact both automobile seat belt laws and motorcycle helmet use laws.

SEC. 1031 INCENTIVE GRANT PROGRAM

MRF's concerns with the incentive grant program is in the setting of goals. It is MRF's contention that a more appropriate approach than requiring states to pass

specific laws is to set goals for reducing accidents, injuries and fatalities. That would then allow each state to be flexible and take its own approach to qualifying for highway safety grants based on real performance, hopefully focusing on accident prevention.

SEC. 1031 PENALTY PROVISION

MRF's major objection is to the **PENALTY** provision of what is now Section 153 of Title 23 United States Code. It is MRF's contention that the federal government's mandating such laws to the state legislatures is wrong and the penalty provisions enacted by SEC. 1031 of ISTEA should be repealed.

SEC. 1031 Penalty Provision Is Bad Public Policy

Many state legislatures do not want to pass helmet laws. Why? Because, motorcyclists in those states do not want helmet laws and have gotten active in the political and legislative process to prevent helmet laws. The question before you is: Should the special interests of insurance companies, the medical industry and self proclaimed safety advocates outweigh the interest of citizen involvement in the legislative process? The penalty provision of SEC 1031 of ISTEA is placing a barrier between the citizens of states and the state legislatures. In MRF's opinion, any policy that discourages or impedes citizen participation in the democratic political and legislative process is bad public policy. This reason alone is reason enough to repeal the penalty provision of SEC. 1031.

State Legislatures Is Where The Issue Of Helmet Laws Belongs

For motorcyclists helmet laws raise very personal and emotional issues. Issues like: Liberty and Freedom; pursuit of happiness; individual Freedom-Of-Choice; expressing one's individuality; being required to place a foreign object on my body because someone else thinks its in my best interest; being forced to appear in public in a certain manner regardless of one's personal opinion of that manner of appearance. MRF believes the closer the government that deals with these issues and makes this decision is to the people the better for all parties involved.

In addition, highway safety laws have always been the responsibility of state governments. Even NHTSA's new office of regional operations is designed to have more of the decisions made at the regional and state level, instead of policy being driven from Washington. Why is the helmet law different? If structured for results, incentive grants are an appropriate way for the federal government to encourage states to take certain actions. But, the penalty provision of Section 153 Title 23 USC is intrusive and a barrier to citizen participation in state government, which is where the issue of helmet laws belongs.

The State Legislatures Do Not Want Or Need To Pass Helmet Laws

When ISTEA was enacted in December of 1991, 26 states did not have mandatory helmet laws for riders of all ages. In 1992, Maryland was the only state to pass a mandatory helmet law, and it was more the threat of loss of highway construction and maintenance funds than the incentive grants that pushed the law through the Maryland General Assembly. However, in 1993, the 25 remaining Freedom-Of-Choice state legislatures have repeatedly defeated bills and amendments for mandatory helmet laws. Fifteen state legislatures have defeated helmet laws in either committee action or floor votes. In the ten other states no bill has been introduced. Those ten states have 1,240 state senators and representatives and not one would sponsor a helmet law this year. Many of these state legislatures have already adjourned for 1993. (Attachment A)

During his testimony for the National Conference of State Legislatures (NCSL) before this subcommittee on April 20, Delaware State Representative Roger Roy expressed NCSL's concern over the number and timing of mandates on the states included in ISTEA. Rep. Roy's testimony identified the deadline for compliance with drivers license revocation as the "most pressing" mandate concern. When questioned by Chairman Rahall as to other major problem areas Rep. Roy stated the helmet law mandate was a real problem. In addition, several state legislatures have passed or are still considering Resolutions denouncing and calling for the repeal of this federal mandate.

States Do Not Need To Pass Helmet Laws

According to NHTSA's Fatal Accident Reporting System (FARS) motorcycle fatalities have been sharply declining since the all time high of 5,144 in 1980. In 1991 there was a modern era of motorcycling low of 2,808 motorcycle accident fatalities, a 45.4 reduction of motorcycle fatalities from 1980. The same FARS data states 46% of these fatalities were know to be wearing a helmet at the time of the accident. Preliminary FARS data indicates there were less than 2,500 motorcycle fatalities in 1992. In addition, FARS shows the fatality rate per 100 million vehicle miles traveled for motorcyclists has also steadily fallen from an all time high of 64.6 in 1977 to 30.6 in 1991, a 52.6% reduction. No other segment of the motoring public can claim this dramatic a reduction in fatalities and fatality rates. These reductions are occurring in both helmet law and non-helmet law states. (Attachment B)

Motorcyclists Have Been Addressing And Funding Motorcycle Safety

MRF believes there is one major contributor to the dramatic decreases in motorcycle accidents -- down 46.2% from 177,160 in 1980, to 95,228 in 1991, according to the statistics compiled by Motorcycle Safety Foundation -- fatalities and fatality rates: **Motorcycle Rider Education**. In 1979 Rhode Island became the first state to have a state administered motorcycle safety program. Since passage of that legislation motorcyclists have lobbied state legislatures for motorcycle safety programs. To date there are 41 states that have funded state motorcycle safety programs, paid for solely by motorcyclists. To fund these programs motorcyclists lobbied to have motorcycle registration and license fees raised to put aside a portion to fund rider education and motorist awareness programs. It is projected these fees will raise over \$13,000,000 for motorcycle safety in 1993. The rest of the funding comes from course fees. This type of program should be considered a model for citizen groups addressing problems and responsibly paying for them. If state legislatures and the state's citizens can consistently reduce motorcycle accidents and fatalities through educational programs why should they have helmet laws forced upon them by the federal government? (Attachment C)

NHTSA's Proposed Rule Is Discriminatory Towards Motorcyclists

The proposed rule to administer the penalty provisions of Section 153 Title 23 United States Code was issued by NHTSA on January 15, 1993 (Attachment D). The proposed rule allows secondary enforcement seat belt laws, but requires primary enforcement helmet laws. In MRF's public comments on the proposed rule we raised concerns about this double standard and discriminatory action against motorcyclists by DOT (Attachment E). They can best be summed up with the following statement from the letter:

"If the issue is increasing usage of helmets and seat belts through mandatory laws, then DOT should require primary enforcement provisions in both motorcycle helmet and automobile seat belt use laws in order for states to be in compliance with the penalty provisions of section 153 title 23, United States Code. However, if DOT is succumbing to the potential political ramifications of requiring the states to have primary enforcement requirements for seat belt laws, then DOT should treat motorcyclists **equally under the law** and require only secondary enforcement with regard to state motorcycle helmet use laws."

NHTSA Has Not Issued Final Rule

The final rule has not been issued by NHTSA, and probably will not be issued until June or July. By the time NHTSA issues the final rule most of the legislatures will have adjourned for the year, with some not meeting again until January 1995. For states to not know what legislation they must pass before they can be in compliance and then be penalized for not complying is wrong. If not immediately repealed, the penalty provision at a minimum should be delayed for at least two years. This would at least allow state legislatures an appropriate amount of time to responsibly deal with the issue, should Congress unwisely decide to retain the penalty provision.

October 1, 1993 Deadline Has Not Allowed Enough Time

Last year this subcommittee tried to address the deadline for the penalty provision by including a one year delay in the penalty implementation date from October 1, 1993, to October 1, 1994, in the technical corrections bill for ISTEA. With ISTEA not being enacted until December 18, 1992, state legislatures were given less than two years to act on an issue that will impact their state by millions of dollars. In addition, the incentive grant program is for FY92, FY93 and FY94. Yet, the penalty provision is set to go into effect at the beginning of FY94. If there must be penalties, at least the incentive grants should be allowed to run full course before penalties are imposed. Since some state legislatures will not be in session in 1993 MRF asks you to consider implementing a two-year delay in the penalty provision deadline.

What Is A Helmet?

In SEC 1031 of ISTEA definitions are given for motorcycles, motor vehicles, passenger vehicles and safety belts. Yet there is no definition for motorcycle helmets under SEC 1031. What was ISTEA's intent? MRF assumes the intent was compliance with FMVSS 218, but, its not specified.

FEDERAL MOTOR VEHICLE SAFETY STANDARD 218

Concerns With Federal Motor Vehicle Safety Standard 218.

MRF has recently held a series of meetings with NHTSA discussing and evaluating FMVSS 218, testing procedures, non-compliance procedures and the lack of consumer protection provisions. These meeting have been held both in Washington and, just a month ago, included a NHTSA led demonstration of the helmet testing procedure at Southwest Research Institute. A number of concerns have been raised by these meetings.

Need For Review And Revision Of FMVSS 218

FMVSS 218 was first issued on March 1, 1974. Since that time there have been only two revisions. One was issued on May 1, 1980 and the other on October 3,

1988. However, these revisions only dealt with the relationships between helmet sizes and test head form sizes, definition changes and refining of testing procedures. There has not been any revision to upgrade the standard to take advantage of new technology to bring about better helmets and improved testing that better reflects the impacts and reactions of helmets and human heads and necks in accident situations. Technology in both materials and biomechanics is dramatically different in 1993, from what it was in 1974. MRF is preparing to petition NHTSA for a revision of FMVSS 218 to, among other things, incorporate new technology and upgrade the quality of helmets.

Concerns About Testing And Compliance With FMVSS 218 And Lack Of Consumer Protection Under FMVSS 218

Contrary to common belief DOT does not approve helmets, much less provide a list of approved helmets. Manufacturers self-certify helmets without any compliance testing required. The manufacturer is then allowed to sell these helmets unless NHTSA happens to test one and find it in non-compliance. Then a process that can drag on for over a year is started between NHTSA and the manufacturer, all the while the product in question is allowed to be sold in the market place. If NHTSA can convince the manufacturer there is a real problem a recall may be started. But, how is the consumer notified? By NHTSA press releases. The manufacturers are not required to include recall registration cards with the helmet, like is now required for child safety seats. And, if the recall action causes the manufacturer to go out of business no action is taken by NHTSA to get these products out of the market place or to notify the consumer of a defective product.

Unfortunately it is the motorcyclist who gets a ticket for wearing a non-conforming helmet that NHTSA should not have let be on the market. To make matters worse NHTSA has recently developed and distributed to police agencies nationwide a video tape titled: Fake Helmets: Unsafe On Any Head. This tape is an attempt to show police officers how to identify "novelty" helmets that don't meet FMVSS 218. The video encourages the officers to be aggressive in

enforcement. It goes as far as to suggest that most motorcyclists know they are breaking the law so they should be stopped and written a ticket. NHTSA does very little to educate the public about helmets. So how is the average motorcyclist to know he or she is buying a helmet NHTSA should have prevented from being sold in the first place? It is NHTSA's responsibility to keep the non-conforming products out of the market place. NHTSA should not be encouraging aggressive enforcement of motorcyclists for wearing non-conforming helmets until it has completed a national public information campaign to educate the millions of motorcyclists in this country about helmet compliance problems.

Another concern is that the limited number of helmets tested by NHTSA is insufficient to adequately monitor compliance by the manufacturers. Though there is not much data compiled on helmet sales, from talking to industry officials and helmet distributors it is estimated there are somewhere between 750,000 and 1,000,000 helmets sold annually in this country. In FY92 NHTSA only tested 72 helmets, four helmets of each of 12 different models and 8 helmets of three other models. From any kind of quality control perspective this is too small of a sample size to ensure quality. This is especially disturbing because ISTEA's mandate is an attempt to force millions of motorcyclists to buy and wear helmets. If the federal government is going to mandate state helmet laws then the federal government should be responsible to ensure the helmets on the market are of quality and consumers are better protected from inferior products. MRF questions a standard that allows safety products on the market that have not been certified as being tested and in compliance and does not provide for more stringent quality control and better recall measures.

Until these issues concerning FMVSS 218 are addressed MRF believes the penalty provision of SEC 1031 should not be implemented, either repealed or delayed for at least two years.

MOTORCYCLISTS ARE NOT SOCIAL BURDENS

A social burden is someone who takes from society and does not contribute back. Motorcyclists are very giving individuals. The MDA drives through Harley-Davidson raise more money than any other single program. Motorcyclists Toy Runs and food drives raise tremendous amount of gifts during the holiday season. Blood Runs collect gallons of blood for local blood banks. And, yes occasionally a motorcyclist needs public assistance because of an accident. That is part of what living in a society is about, helping each other get through life! The one item I will point out is that in almost every study motorcycle accident victims rely on public funds less than the other trauma victims. I cite the study An Examination of Motorcyclist Injuries and Costs Using North Carolina Motor Vehicle Crash and Trauma Registry Data, by Jane Stutts and Carol Martell of the University of North Carolina Highway Safety Research Center. The study found only 7.9% of motorcycle accident victims relied on Medicare and Medicaid. Whereas, the study found 13.9% of other road trauma cases and 27% of non-road trauma cases relied on either Medicare or Medicaid. The study also found that motorcyclists had the highest insurance payment rate of any group - 56.1%

IF HELMET LAWS REDUCE STATE MEDICAL COSTS AND INSURANCE RATES WHERE ARE THE SAVINGS?

Proponents of helmet laws lead you to believe millions of dollars in state funds will be saved and insurance rates will be reduced if helmet laws are enacted. Have any of the states that passed helmet laws in the last five years reduced their health care budgets? Have automobile and motorcycle insurance rates gone down in any of those six states? I do not believe so.

SUMMARY

For many combinations of the reasons discussed above, there is wide spread support in the 103rd Congress for repeal of the penalty provisions of Section 153 Title 23 USC, which was enacted by SEC. 1031 of ISTEA. Twenty percent of the Members of the House of Representatives - 87 - have joined Congresswoman

Snowe as cosponsors of her legislation to repeal the penalty provision -- H.R.799. There are cosponsors from 36 different states (Attachment F). Over half of the state legislatures do not want to comply with this federal mandate. The citizens most affected do not want to be subjected to this intrusive federal government mandate and resent an attempt being made too push aside citizens' concerns in the legislative process by imposing penalties on highway funds. All of these reasons add up to one logical result: Repeal of the Penalty Provisions of Section 153 Title 23 USC. At a minimum, act as soon as possible to delay the implementation date of the penalties. In the long term best interest of good government, let the state legislatures deal with this issue, as they have done well since the 1976 repeal of the federal mandate. Enact H.R.799 in the 103rd Congress.

In closing, I believe that when a government has to resort to mandates on personal behavior it is an admission that the people being mandated are not capable of being educated or convinced another way is better. Dictators rule by mandate and heavy handed control of personal behavior. Leaders in a free society, at least in my belief, lead by using well reasoned interaction to convince people to take actions. I ask this subcommittee affirm that belief by shifting the emphasis from mandating states pass helmet laws to better structured incentive grant programs and motorcycle rider education and motorist awareness programs.

Ben Franklin once said "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety." Motorcyclists have a track record in the last decade of improving safety while maintaining our Liberty, at times in as many as 32 states but currently only in 25. Allow motorcyclists to help maintain that delicate balance between safety and Liberty by enacting H.R.799


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States Where Legislative Action Has Been Taken To Defeat Mandatory Helmet Laws

Arizona	After a hearing in House Transportation Committee the sponsor has publicly stated he feels the bill is dead and will not push for a vote in committee (February 2)
Colorado	Defeated in Senate Transportation Committee 6-1 (February 2)
Connecticut	Defeated in Joint Transportation Committee 14-9 (March 15)
Hawaii	Defeated in Senate Transportation Committee 6-4 (February 17)
Illinois	Senate Transportation Committee refuses to take action on SB69 (March 23)
Iowa	Defeated on House Floor 38-59 (April 26)
Kansas	Defeated in Senate Transportation & Utility Committee 6-4 Defeated four attempts to offer floor amendments on helmet law to other bills the House was taking action on After Senate amends helmet law to HB2452, House repeatedly rejects senate amendment, final vote to non-concur is 76-46 to strip helmet law amendment, votes 39-1 and House votes 80-42 to pass HB2452 without helmet law amendment (April 6)
Minnesota	Defeated in House Transportation Committee 15-11 (March 24)
Montana	Defeated in Senate Highways and Transportation Committee 8-0 (February 20)
New Hampshire	Defeated on House floor on an overwhelming voice vote (March 16)
North Dakota	Defeated on Senate floor 35-14 (February 1)
Oklahoma	Sponsor withdraws bill when chairman of the Public Safety and Corrections Committee offers amendments during committee action (February 15)
Rhode Island	Defeated in House Health, Education and Welfare Committee 11-0 (April 6)
South Dakota	Defeated in House Transportation Committee 7-6 (February 9)

States Where The Legislature Has Adjourned And No Mandatory Helmet Law Was Introduced

Idaho New Mexico Utah Wyoming

States Past Bill Filing Deadlines Without Mandatory Helmet Law Bills Being Introduced

Indiana Maine

States Where No Mandatory Helmet Law Bills Have Been Introduced

Delaware Ohio South Carolina Wisconsin

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P.O. Box 1808, Washington, D.C. 20013-1808 • (202) 546-0983 • FAX# (202) 546-0986

1. Trends

Motorcycle Fatalities

The number of motorcycle occupant fatalities in 1991 is 11.9 percent lower than 1975, and 45.4 percent below the 1980 figure of 5,144, the highest number experienced during this period. Motorcycle registrations have declined by 15.9 percent and vehicle miles of travel have increased by 63 percent since 1975. The 1991 fatality rate of 30.6 motorcycle fatalities per 100 million vehicle miles traveled has decreased by 46 percent since 1975, but it is 20 times higher than the passenger car fatality rate of 1.5.

Table 8
Motorcycle Fatalities, Registered Vehicles,
Vehicle Miles of Travel, and Fatality Rates

Year	Motorcycle Occupant Fatalities	Registered Motorcycles	Vehicle Miles of Travel (Millions)	Fatality Rate per 100,000 Registered Motorcycles	Fatality Rate per 100 Million VMT
1975	3,189	4,964,070	5,629	64.24	56.7
1976	3,312	4,933,332	6,003	67.14	55.2
1977	4,104	4,933,256	6,349	83.19	64.6
1978	4,577	4,867,864	7,158	94.02	63.9
1979	4,894	5,422,132	8,637	90.26	56.7
1980	5,144	5,693,940	10,214	90.34	50.4
1981	4,906	5,831,132	10,690	84.13	45.9
1982	4,453	5,753,858	9,910	77.39	44.9
1983	4,265	5,585,112	8,760	76.36	48.7
1984	4,608	5,479,822	8,784	84.09	52.5
1985	4,564	5,444,404	9,086	83.83	50.2
1986	4,566	5,262,322	9,397	86.77	48.6
1987	4,036	4,917,131	9,506	82.08	42.5
1988	3,662	4,584,284	10,024	79.88	36.5
1989	3,141	4,433,915	10,371	70.84	30.3
1990	3,244	4,259,462	9,557	76.16	33.9
1991	2,808	4,177,037	9,178	67.22	30.6

Source: Registered Vehicles and Vehicle Miles of Travel—Federal Highway Administration.

5. Persons**Helmet Usage by Motorcyclist Operators and Passengers**

Helmet usage rates in 1991 were 46 percent for operators of motorcycles involved in fatal crashes and 40 percent for passengers. Usage rates for fatally injured motorcyclists were similar.

Table 96 Motorcycle Helmet Usage					
	Helmet Used	Helmet Not Used	Usage Unknown	Total	Usage Rate* (Percent)
All Motorcyclists					
Operator	1,206	1,392	221	2,819	46
Passenger	210	319	49	578	40
Total	1,416	1,711	270	3,397	45
Fatalities					
Operator	1,082	1,230	187	2,499	47
Passenger	117	172	20	309	40
Total	1,199	1,402	207	2,808	46
*Percentage of known usage. Note: Includes minibikes and motorscooters.					



MOTORCYCLE SAFETY FOUNDATION

National Resource Office
2 Jenner Street, Suite 150
Irvine, CA 92718-3812
(714) 727-3227
FAX (714) 727-4217

CYCLE SAFETY INFO

The information summarized on this chart includes only those provisions that are specified in state law. Many of the states listed have additional provisions relating to the implementation of the rider education program that are specified in regulations or administrative rules. Training is available in all 50 states; please call 1-800-447-4700 for a *RiderCourse®* near you.

STATE MOTORCYCLE RIDER EDUCATION LEGISLATION — 1993

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
Alabama	22% of money collected from \$2.00 fine assessed on traffic infraction convictions	\$190,000	Programs in motorcycle safety	Money collected is also earmarked for conducting programs in traffic safety and boating safety. (However, the emphasis is on motorcycle safety.)	August 8, 1987	Alabama Traffic Safety Center, University of Montevallo
Arizona	Motorcycle registration — \$1.00	\$57,100	Motorcycle testing and education programs.	State may contract with public and private agencies to implement education program. State may conduct classes and charge tuition.	July 24, 1981	Department of Transportation — Motor Vehicle Division
California	Motorcycle registration — \$2.00	\$1.4 million	Motorcycle rider training programs, public awareness	Advisory committee may be established. Course completion required for riders under 21 prior to licensing.	January 1, 1986	Department of California Highway Patrol
Colorado	Motorcycle endorsement — \$1.00, motorcycle registration — \$2.00	\$225,000	Motorcycle operator safety training program, including rider education course, instruction relating to effects of alcohol and drugs on motorcycle operation, and instructor training course	Department of Transportation shall set standards for course certification and instructor training and contract with vendors to provide program. Provides for program coordinator and instructor training specialist. No more than 15% of program cost shall be spent for administration. Prescribes instructor qualifications. Provides for 5-member advisory committee.	July 1, 1990	Office of Transportation Safety
Connecticut	Motorcycle registration — \$2.00	\$110,000	Motorcycle rider education program.	10% insurance discount for graduates. Course completion required for riders under 18 prior to licensing.	July 1, 1982	Department of Transportation
Delaware	Motorcycle registration — \$4.00, initial motorcycle endorsement — \$2.00, motorcycle endorsement renewal — \$5.00	\$79,400	Motorcycle rider education program	Courses open to all state residents with driver's license or motorcycle permit. Courses meet or exceed MSF standards. Written exam and road test waived upon successful course completion. Provides instructor requirements. Tuition is charged. Course completion required for riders under 18 prior to licensing. Insurance discount effective for 3 years following course completion.	July 1, 1985	Department of Public Safety

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
Florida	Motorcycle or moped registration — \$2.50	\$480,000	Motorcycle safety courses.	Department to prescribe curricula and qualifications for instructor certification; these may be developed by MSF or other traffic safety groups. Curricula must include minimum of 12 hours instruction, at least 6 of actual motorcycle operation. Department shall, subject to funds availability, reimburse organization providing approved courses at amount not to exceed \$50 per student successfully completing course. May charge tuition sufficient to defray cost, and registration fee not to exceed \$20, which must be refunded upon completion. Course completion required for riders under 21 prior to licensing.	October 1, 1987	Department of Highway Safety & Motor Vehicles
Georgia	Motorcycle registration — \$3.00	\$206,000	Motorcycle operator safety training programs.	Motorcycle safety coordinator provided; instructor qualifications. Courses to be based on MSF Motorcycle Rider/Course or equivalent	January 1, 1985	Department of Public Safety
Hawaii	Insurer assessment — \$2.00 per year on each motorcycle insured	\$15,000	Driver education program for motorcycle operators.	15% insurance discount for graduates. Course completion required for permit holders.	June 16, 1980	University of Hawaii — Community Colleges — Employment Training Office
Illinois	Motorcycle registration — \$7.00, \$3.50 for a half year	\$1.4 million	Cycle Rider Safety Training Courses.	Courses offered free through Regional Training Centers to valid driver's license holders who are at least 16. Mandatory for 16 and 17-year-olds in order to operate 150cc or larger motorcycle. Any registration fee refunded upon course completion	January 1, 1982	Department of Transportation
Indiana	Motorcycle registration — \$5.00	\$480,000	Motorcycle operator safety education program, instructor training, public awareness, improving licensing system.	Coordinator, training specialist and 5-member advisory committee provided. Courses to be equal to, or more stringent than, MSF courses. Department may enter into contracts with regional training centers or other approved sites. Sites may charge tuition fee.	January 1, 1987	Department of Education
Iowa	Motorcycle license — \$1.00/ year of validity	\$400,000	Establishment of new motorcycle rider education courses and reimbursement to sponsors for costs of providing approved courses.	Course completion required for riders under 18 prior to licensing	July 1, 1987	Department of Education
Kansas	Motorcycle license — \$1.00 (legislative appropriation)	\$88,500	Motorcycle safety courses	Courses conducted by school districts and community colleges. Instructors do not have to be certified teachers	September 1, 1982	Department of Education
Kentucky	\$4.00 from each motorcycle registration, license, & permit	\$225,000	Motorcycle safety education program. Program shall provide for instructor training courses, instructor approval, and rider training courses for novice riders held at locations throughout state	Program may provide for training courses for experienced riders; activities to increase motorcyclists' knowledge of alcohol and drug use; driver improvement and licensing improvement efforts, program promotion, public awareness of motorcycles; enhancement of motorcycle safety through education. Course standards shall meet or exceed those prescribed by MSF. Novice courses shall include at least 8 hours of hands-on instruction. Licensing skills test may be waived upon successful completion of	July 15, 1992	Transportation Cabinet

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
Kentucky (continued)				course which includes a similar test. Program shall offer instructor training courses. Prescribes completion requirements for such. Prescribes instructor qualifications. Requires biennial report to Governor and Legislative Research Commission.		
Louisiana	Motorcycle license — \$5.00	\$76,000	Motorcycle operator training campaigns to promote participation, motorcycle safety, and motorcycle awareness; lease/purchase of equipment and training materials.	Programs shall be tuition-free. Skill test waived upon successful completion. Program shall provide for motorcycle operator training, instructor certification and training of law enforcement personnel in proper motorcycle operation.	July 6, 1987	Department of Education
Maine	Motorcycle registration — \$2.00	\$58,000	Motorcycle rider education program.	Prescribed program may be offered by public secondary schools, adult education programs, approved private schools or independently. Program to be at least 8 hours of instruction related to actual operation, emphasizing safety measures. May include instruction and riding experience on a motorcycle driving range. Secretary to conduct instructor certification courses. Program completion required prior to receiving learner's permit. Establishes annual fees: instructor certification — \$100; classroom and driving range inspection — \$50 each.	March 1, 1987	Secretary of State
Maryland	Motorcycle registration — \$5.00; initial motorcycle license — \$22.00	\$550,000	Motorcyclist training and public awareness.	Any resident with driver's or motorcycle license or permit, or eligible for motorcycle permit may enroll. Course fee not to exceed \$25.00. Project coordinator provided. Course completion and driver education required for riders under 18 prior to licensing. NOTE: The Department of Transportation is required to turn over the Motorcycle Safety Program to private providers by March 15, 1993.	July 1, 1983	Department of Transportation — Motor Vehicle Administration
Massachusetts	Motorcycle registration — \$2.00	\$156,000	Rider safety courses, instructor training, promotion, public awareness.	Training specialist and 7-member advisory committee provided. Prescribes instructor qualifications. Annual report on programs and effectiveness to be filed. 10% insurance discount for graduates of training programs.	April 7, 1987	Governor's Highway Safety Bureau & Executive Office of Public Safety
Michigan	Original motorcycle endorsement — \$4.00; license test — \$15.00; motorcycle registration — \$3.00	\$600,000	Motorcycle safety courses.	Mandatory for riders under 18 prior to licensing. Course fee not to exceed \$25. State coordinator shall be a Chief Instructor. Skills test waived upon course completion.	January 1, 1984	Department of Education
Minnesota	Initial motorcycle license — \$7.00; motorcycle license renewal — \$6.00	May not exceed \$500,000 (only 60% may be used for rider education)	Motorcycle safety education program, instructor training, safety promotion, public information.	Course completion required for riders under 18 prior to licensing.	July 1, 1982	Departments of Public Safety and Education

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
Montana	Course fees, motorcycle registration — \$2.50; motorcycle license endorsement — \$ 475/yr. (\$2.00 every four years when driver's license is renewed)	\$100,000	To conduct motorcycle safety training courses throughout the state to the extent funds are available. Subject to fund availability, construction, repair or purchases to provide course facilities. Motorcycle awareness.	5-member advisory committee. Superintendent shall establish minimum training standards that must be based on those of the MSF or a similar organization	July 1, 1990	Superintendent of Public Instruction
Nebraska	Motorcycle registration — \$3.00; Motorcycle-only license and permit — \$2.50 (legislative appropriation)	\$78,000	Motorcycle safety courses, administration, motorcycle safety promotional materials	Instructor preparation course developed 10-member advisory committee created. Prescribes course requirements, including at least 6 hours of classroom and 8 hours of laboratory including actual driving, and Chief Instructor qualifications	August 15, 1981	Department of Motor Vehicles
Nevada	Motorcycle registration — \$6.00	\$110,000	Program for education of motorcycle riders. Includes instruction relating to development of proper habits and skills necessary for safe motorcycle operation. Relate effects of alcohol and controlled substances on motorcycle operators. At least 8 hours of instruction in actual motorcycle operation for inexperienced operators and at least 4 hours for experienced operators	Director shall establish program fee of not more than \$100. Prescribes instructor qualifications. Director shall approve courses which must meet or exceed course requirements established by nationally recognized public or private organizations. 5-member advisory board created	July 1, 1991	Department of Motor Vehicles and Public Safety
New Hampshire	Motorcycle registration — \$1.00; motorcycle learner's permit, license or endorsement — \$5.00	\$190,000	Motorcycle rider training course at least equivalent to the MSF course and instructor training. Director may expand program to include public awareness, alcohol and drug effects, driver improvement for motorcyclists, licensing improvement, program promotion or other motorcycle safety programs.	Provides for program coordinator. Training specialist(s) may be appointed. Reasonable tuition may be charged. Specifies instructor qualifications. 5-member advisory committee created. Rules may be adopted requiring 10% insurance discount for graduates. Skills test waived upon course completion.	July 1, 1989	Department of Motor Vehicles
New Jersey	Motorcycle license — \$5.00; student course fees	\$242,125	Motorcycle safety education program.	Rider courses shall meet or exceed standards and requirements of MSF's rider's course. Curriculum shall be modeled on MSF's. Prescribes instructor qualifications, including MSF certification. Establishes an 8-member advisory committee. Road test waived upon successful course completion.	June 1, 1992	Department of Law and Public Safety — Office of Highway Traffic Safety
New Mexico	Motorcycle registration — \$2.00	\$60,000	Motorcycle training, driver awareness, alcohol and drug use, rider education, purchase of equipment.	Course completion required for riders under 18 prior to licensing except students attending a NM public school that does not offer an approved course.	July 1, 1983	Highway and Transportation Department — Traffic Safety Bureau

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
North Carolina	Motorcycle registration — \$3.00	\$170,000	Statewide motorcycle safety instruction.	Program may be administered by a motorcycle safety coordinator responsible for planning, curriculum, and completion requirements. Program implemented through the Department of Community Colleges at institutions that choose to provide the program. Insurance companies may apply to Bureau for insurance discount for course graduates.	October 1, 1989	Department of Community Colleges
North Dakota	Motorcycle registration — \$5.00	\$100,000	Motorcycle safety course, public awareness.	Learner's permits issued to 14 or 15-year-olds having completed course. Completion of course meeting minimum MSF requirements required for riders under 16 prior to licensing.	January 1, 1980	Department of Transportation
Ohio	Motorcycle registration — \$4.00	\$1,310,969	Motorcycle safety and education program.	Courses must meet MSF course standards. Tuition fee of not more than \$25 may be charged. Provides for training specialist. Course completion required for riders under 18 prior to licensing.	March 11, 1987	Department of Highway Safety
Oregon	Motorcycle license endorsement — \$7.00; license renewal — \$7.00	\$323,000	Motorcycle safety program.	State motorcycle safety program administrator provided. Course completion required for riders under 19 prior to licensing.	October 15, 1983	Traffic Safety Division, Oregon Department of Transportation
Pennsylvania	Motorcycle license — original, annual renewal, learner's permit/replacement — \$2.00	\$1.4 million	Motorcycle safety and education program.	License exam waived for successful graduates. Instructor training provided.	July 1, 1984	Department of Transportation
Rhode Island	Tuition fee paid by student — \$20.00; supplemental funding by DMV — \$3.00 on each motorcycle registration	\$120,000	Motorcycle rider education.	Minimum of 6 hours and maximum of 20 hours of classroom and/or on-the-road training for motorcycle operators license applicants. Instruction is given by state board of regents certified teachers. Education program available to any eligible resident with motor vehicle operator's license. Course completion required prior to receiving motorcycle endorsement.	January 1, 1979	Department of Education
South Carolina	None	None		Board shall designate program coordinator. Program is implemented through the state technical education system at institutions choosing to provide it. Instruction must incorporate the MSF's MRC-RSS core curriculum or equivalent. Course fee may be charged. Persons satisfactorily completing the program may apply for a reduction in motorcycle insurance rates.	June 11, 1990	State Board for Technical and Comprehensive Education
South Dakota	Motorcycle registration — \$2.00	\$47,500	Motorcycle safety courses and education.	None	July 1, 1982	Department of Public Safety
Tennessee	Motorcycle registration — \$2.00; motorcycle license and permit exam application — \$1.00	\$191,000	Motorcycle rider education program including instructor training, licensing improvement, alcohol and drug education, public awareness, rider improvement program for motorcyclists, technical assistance.	Provides for program coordinator, training specialist(s), and 5-member advisory committee. Tuition may be charged. Prescribes Instructor qualifications. 10% insurance discount effective for 3 years following course completion. Skills test waived upon course completion.	July 1, 1988	Department of Safety

State	Source and Amount of Earmarked Fee	Estimated Annual Funding Generated	Stipulated Uses	Additional Provisions	Effective Date of Original Law	Administering Agency
Tennessee (continued)			program promotion; reimbursement of organizations with course sites			
Texas	Motorcycle license renewal fee — \$5.00	\$507,420	Motorcycle operator training and safety program provides information to public on sharing roadway with motorcycles.	Coordinator and 8-member advisory committee provided. Course fee may be charged. Program shall use MSF curricula and instructor certification requirements. Program director shall be an MSF Chief Instructor. Specifies grounds for disapproval of instructor or program sponsor. Course completion required for riders under 18 prior to licensing.	September 1, 1983	Department of Public Safety
Utah	None	None		Commercial driver training schools offering motorcycle rider education must meet or exceed MSF standards. Instructors must meet or exceed MSF standards for certification.	April 23, 1990	Department of Public Safety
Vermont	Motorcycle registration — \$2.50, motorcycle learner's permit — \$2.00, motorcycle endorsement — \$1.00/yr	\$47,000	Motorcycle rider training program, including instructor training. Program may include public awareness, alcohol and drug effects, driver improvement for motorcyclists, licensing improvement, program promotion or other motorcycle safety programs.	Provides for program coordinator and one or more training specialists. DMV may enter into contracts with public or private organizations. Reasonable course tuition fee may be charged. Prescribes instructor qualifications. Creates 7-member advisory committee. Course shall be required for first-time motorcycle permit or license applicants before taking on-motorcycle portion of license exam when Commissioner determines that program can be operated effectively and that there are adequate facilities, materials, and funding to provide training to all persons who desire or require it.	June 21, 1990	Department of Motor Vehicles
Virginia	Motorcycle registration — \$3.00	\$178,000	Motorcycle rider safety training courses	Regional Cycle Rider Safety Training Centers provided. DMV may enter into contracts with training centers.	May 1, 1985	Division of Motor Vehicles
Washington	Motorcycle license examination — \$2.00, initial motorcycle license — \$6.00, license renewal — \$7.50	\$600,000	Motorcycle skills education course for both novice and advanced riders; minimum of 8 hours and no more than 16 hours at a cost of no more than \$30	All instructors must conduct at least three classes in a 1-year period to maintain teaching eligibility. Director may receive gifts, grants and endowments from private sources that shall be deposited in the motorcycle safety account. 5-member advisory committee created. Course completion required for riders under 18 prior to licensing.	June 10, 1982	Department of Licensing
West Virginia	Motorcycle registration — \$2.00, motorcycle-only license — \$10.00	\$40,000	Motorcycle safety education program, including rider and instructor training courses	Program may include public motorcycle safety awareness, alcohol and drug awareness, driver and licensing improvement efforts and program promotion. DMV may enter into contracts with public or private organizations for technical assistance in conducting courses. Reasonable tuition may be charged. Course graduates may be exempted from license exam. Provides for program coordinator to direct program and conduct annual evaluation.	July 1, 1992	Department of Motor Vehicles
Wisconsin	Appropriation from Transportation Fund	\$162,600	Riding courses, public awareness, safety education, improved license testing.	Set up by vocational regions. Skills test waived upon successful course completion.	May 1, 1982	Department of Transportation — Office of Transportation Safety

MOTORCYCLE SAFETY FOUNDATION

MOTORCYCLE SAFETY ADMINISTRATORS

Should you require information concerning rider education legislation in any of the states outlined in this CSI, or have questions regarding rider education as required by the military, please contact the appropriate personnel as listed here.

Motorcycle Safety Foundation
Education Department
2 Jenner Street, Suite 150
Irvine, CA 92718-3812
714/727-3227
FAX 714/727-4217

National Highway Traffic Safety Administration (NHTSA)
NTS-23 400 7th Street S.W.
Washington, D.C. 20590
Fax: 202/366-2766

Mr. Ron Engle, Chief
Safety Countermeasures Division
202/366-2717

Ms. Diane Wigle, Highway Safety Specialist
Office of Alcohol & State Programs
202/366-9836

ALABAMA
Dr. Freddie H. Ford
Coordinator,
Motorcycle Safety Programs
Alabama Traffic Safety Center
University of Montevallo
Montevallo, AL 35115
205/665-6740
Fax: 205/665-6221

ARIZONA
Mr. Frank Johnson
Manager,
Motorcycle Safety Program
Motor Vehicle Division
Arizona Department of Transportation
1801 W. Jefferson, MD 531M
Phoenix, AZ 85007
602/255-8072
Fax: 602/253-3069

CALIFORNIA
Sgt. Mike Nivens
California Highway Patrol
Office of Special Projects
P.O. Box 942898
Sacramento, CA 94298-0001
916/657-7222
Fax: 916/452-3151

Mr. Doug Fitts
Project Manager
Crain & Associates
120 Santa Margarita
Menlo Park, California
94025-2725
415/323-6777
Fax: 415/323-3591
RiderCourse Information:
800-CC-RIDER

COLORADO
Mr. Bob Philpot
Coordinator, Motorcycle Program
Department of Transportation
Office of Transportation Safety
4201 E. Arkansas Avenue
Denver, CO 80222
303/757-9466
Fax: 303/757-9439

CONNECTICUT
Mr. Jerry R. Beal
State Coordinator &
Mr. Raymond C. Gaulin, Jr.
Motorcycle Training Coordinator
D.O.T. Office of Highway Safety
24 Wolcott Hill Road
Wethersfield, CT 06109
203/666-4343
Fax: 203/666-1270
RiderCourse Information
800/872-7433

DELAWARE
Ms. Agnes Mical
Coordinator, Motorcycle Program
Delaware Motor Vehicle Division
P.O. Box 698
Dover, DE 19903
302/739-4422
302/537-4140
Fax: 302/739-3152

FLORIDA
Mr. R. I. (Bob) Sirman
Bureau of Driver Improvement
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, FL 32399-0570
904/488-3286
Fax: 904/487-7080

GEORGIA
Mr. T. Chadwick Burns
Coordinator,
Motorcycle Safety Programs
Department of Public Safety
P.O. Box 1455
Atlanta, GA 30371-2303
404/624-7720
Fax: 404/624-7742

HAWAII
Ms. Morgan D. Keene
Coordinator,
Motorcycle Safety Program
University of Hawaii
Community Colleges
Employment Training Office
33 South King Street, Suite 308
Honolulu, HI 96813
808/587-2621
808/587-2623
Fax: 808/587-2626

ILLINOIS
Mr. Dave Taylor &
Mr. Packey Rush
Cycle Rider Safety Coordinators
Division of Traffic Safety,
3rd Floor
3215 Executive Park Drive
Springfield, IL 62703
217/782-2920
Fax: 217/782-9159
RiderCourse Information
800/322-7619 (ISU)
800/892-9607 (NIU)
800/642-9589 (SIU)
800/252-3348 (U of I)

INDIANA
Mr. John Bodeker
Department of Education
Division of School/Traffic Safety
Room 229, State House
Indianapolis, IN 46204-2798
317/232-0890
Fax: 317/232-9121

IOWA
Mr. Robert Roush
Iowa Department of Education
Grimes Office Building
Des Moines, IA 50319-0146
515/281-4746
Fax: 515/242-6025

KANSAS
Mr. Gerald Christensen
Kansas Department of Education
120 East Tenth Street
Topeka, KS 66612
913/286-3141
Fax: 913/296-7933

KENTUCKY
Mr. Bill Wilhoite
Director, Driver Licensing Division
State Office Building, 2nd Floor
Frankfort, KY 40622
502/564-7731
Fax: 502/564-8145

LOUISIANA
Mr. Laurence P. Ourso
Supervisor,
Motorcycle Safety Program
Louisiana Department of Education
Room 822-A
P.O. Box 94064
Baton Rouge, LA 70804-9064
504/342-3404/3427
Fax: 504/342-7316

MAINE
Mr. Al Judkins
Training and Education
Coordinator
Bureau of Motor Vehicles
Station 29, State House
Augusta, ME 04333
207/287-2785
Fax: 207/287-5455

MARYLAND
Mr. Andrew Krajewski
Motor Vehicle Administration
Motorcycle Safety Division
6601 Ritchie Highway NE
Glen Burnie, MD 21062
410/768-7328
Fax: 410/768-7169
RiderCourse Information:
800/638-1722

MASSACHUSETTS
Mr. Brock Chapman
Governor's Highway Safety Bureau
Metro Boston Complex
100 Cambridge Street,
Room 2104
Boston, MA 02202
617/727-7827
Fax: 617/727-5077

MICHIGAN
Mr. Thomas J. Hampton
Motorcycle Safety Education Consultant
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909
517/373-0763
Fax: 517/373-2537

MINNESOTA
Ms. Karen Kadar
Coordinator, Motorcycle Safety
Minnesota Institute of Public Health
2829 Vermdale Avenue
Anoka, MN 55303
612/427-5310
Fax: 612/427-7841
RiderCourse Information
800/247-1303

MONTANA
Mr. James L. Bernet
Motorcycle Safety Education Specialist
Montana Office of Public Instruction
State Capitol
Helena, MT 59620
406/444-4569
Fax: 406/444-3924
RiderCourse Information
800/922-2453

NEBRASKA
Ms. Becky Simson
Department of Motor Vehicles
P.O. Box 94612
Lincoln, NE 68509
402/471-3880
Fax: 401/471-9594

NEVADA

Mr. Jeffrey Martin
Motorcycle Safety Administrator
Office of Traffic Safety
555 Wright Way
Carson City, NV 89711-0999
702/687-4321
Fax: 702/687-5328

NEW HAMPSHIRE

Mr. Roger Alter
Motorcycle Safety Coordinator
New Hampshire Department
of Public Safety
James H. Hayes Safety Building
Hazen Drive
Concord, NH 03301
603/271-6088
Fax: 603/271-1061

NEW JERSEY

Mr. Nick Geger
Principal Highway Safety
Specialist
State of New Jersey
Division of Highway Traffic Safety
CN 048
Trenton, NJ 08625
609/588-3762
Fax: 609/588-7716

NEW MEXICO

Mr. John Fanner
Chief, Traffic Safety Bureau
P.O. Box 1149
Santa Fe, NM 87504-1149
505/827-0427
Fax: 505/827-0431

Mr. David A. Stewart
Program Administrator
Motorcycle Training Office
3401 Pan American NE
Albuquerque, NM 87107
505/841-2483
Fax: 505/841-2471
Rider/Course Information:
800/541-7952

NORTH CAROLINA

Ms. Rosemary Unsworth
North Carolina Motorcycle Safety
Education Program
A-19, Minges
East Carolina University
Greenville, NC 27858
919/757-4650
Fax: 919/757-4669

NORTH DAKOTA

Mr. Frank LaQua
Coordinator of Rider Education
Drivers License and
Traffic Safety Division
808 East Boulevard Avenue
Bismarck, ND 58505-0700
701/224-4354
Fax: 701/224-4545
Rider/Course Information:
800/247-1213

OHIO

Ms. Lorie Laing
Motorcycle Safety Coordinator
Ohio Department of
Highway Safety
P.O. Box 7190
Columbus, OH 43268-0563
614/486-8855
614/486-4041
Fax: 614/486-0433
Rider/Course Information:
800/837-4337

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OREGON

Mr. Stan Porter
Oregon Department of
Transportation
Traffic Safety Section
400 State Library Building
Salem, OR 97310
503/378-3669
Fax: 503/378-8445

Mr. Steve Garretts
Team Oregon Motorcycle
Safety Program
Oregon State University
Department of Health
Strand/AG Hall, Room 216
Corvallis, OR 97331-2216
503/737-2459
Fax: 503/737-4001
Rider/Course Information:
800/545-9944

PENNSYLVANIA

Ms. Pamela Thomas
Manager, Motorcycle
Safety Program
Bureau of Driver Licensing
Room 415, Transportation &
Safety Building
Hamburg, PA 17123
717/878-9723
Fax: 717/878-8217

Dr. Allen Robinson
Project Director
School of Continuing Education
Indiana University of
Pennsylvania
Highway Safety Center
R&P Building
Indiana, PA 15705
412/357-4051
Fax: 412/357-7595
Rider/Course Information:
800/442-6826

RHODE ISLAND

Mr. Americo Ottaviano
Dean, Community Services
Louisquisset Pike/CCRI
Lincoln, RI 02865
401/333-7070
Fax: 401/333-7111

SOUTH CAROLINA

Mr. Lee Hartley
State Coordinator
South Carolina Education
Program
1735 St. Julian Place, Suite 305
Columbia, SC 29204
803/779-5852
Rider/Course Information:
800/45-RIDER

Mr. Wayne Wilkes
South Carolina Motorcycle
Dealer's Association
1735 St. Julian Place, Suite 304
Columbia, SC 29204
803/765-0477
Fax: 803/765-2213

SOUTH DAKOTA

Mr. Rick Kiley
South Dakota Safety Council
3021 East 10th Street
Sioux Falls, SD 57103
605/338-0472
Fax: 605/338-0811
Rider/Course Information:
800/922-2022

TENNESSEE

Mr. John Richard (Rick) Culwell
State Coordinator,
Motorcycle Rider
Education Program
Tennessee Law Enforcement
Training Academy
3025 Lebanon Road
Donelson, TN 37214
615/741-5851
Fax: 615/741-5325

TEXAS

Mr. Henry Palma, Jr.
Bureau Manager
Texas Department of
Public Safety
Attn: Motorcycle Safety Bureau
P.O. Box 4087
5805 North Lamar Boulevard
Austin, TX 78773-0001
512/465-2021
Fax: 512/465-2506
Rider/Course Information:
800-CYCLISTS

UTAH

Mr. Terry Paskins &
Mr. Dale Bell
Weber State University
3750 Hanson
Ogden, UT 84408-4009
801/626-6772 (Terry)
801/626-7337 (Dale)
Fax: 801/626-7978

VERMONT

Mr. Russell Goslant
Department of Motor Vehicles
120 State Street
Montpelier, VT 05602
802/828-2083
Fax: 802/828-2098

VIRGINIA

Mr. Bruce Biondo
Manager, Motorcycle Safety
Virginia Rider Training Program
P.O. Box 27412
Richmond, VA 23269
804/367-1813
Fax: 804/367-6031

WASHINGTON

Mr. W. Don Mapp
Washington Motorcycle
Safety Program
Department of Licensing
1125 Washington Street SE
Olympia, WA 98504
206/586-1424
206/586-2487
Fax: 206/586-8351
Rider/Course Information:
800/962-9010

WEST VIRGINIA

Mr. R. Douglas Thompson
State Coordinator
West Virginia Department
of Transportation
Division of Motor Vehicles
Capitol Complex, Building 3
1900 Kanawha Boulevard E
Charleston, WV 25317
304/558-2350
Fax: 304/558-0037

WISCONSIN

Mr. Ronald L. Thompson
Manager, Motorcycle
Safety Program
Wisconsin Department of
Transportation
P.O. Box 7910
Madison, WI 53707
608/266-7855
Fax: 608/267-0441
Rider/Course Information:
800/358-9677

MILITARY SAFETY ADMINISTRATORS

Motorcycle Safety Foundation
Mr. James A. Riley, Director
MSF Military Coordinator
Eastern Resource Office
1235 Jefferson Davis Hwy.
Suite 600
Arlington, VA 22202
703/521-3367
Fax: 703/521-1023

U.S. AIR FORCE

MSgt. Danny Tolentino
HQ Air Force Safety
Agency/SEGO
Norton AFB, CA 92409-7001
714/282-3614
Fax: 714/282-3614
DSN 876-3614
Fax: 714/382-2777
DSN Fax: 876-2777

U.S. ARMY

Mr. Rick Ackerman
U.S. Army Safety Center
Attn: CSSC-PMI
Fort Rucker, AL 36362-5363
205/255-4631
205/255-2450
Fax: 205/255-5318

U.S. MARINE CORPS

Mr. Russell Stephens
Headquarters USMC (MHS)
2 Navy Annex
Washington, D.C. 20380-1775
703/696-2079
Fax: 703/696-2080

U.S. NAVY

Mr. Charles M. Noonan
Code 424, Naval Safety Center
375 A. Street
Norfolk, VA 23511-4399
804/444-1470
Fax: 804/444-6044

U.S. COAST GUARD

ADC Bob Weiss
Commandant (K-SE-2)
USCG HQS
2100 2nd Street SW
Washington, D.C. 20593
202/267-2962
Fax: 202/267-4355

The Motorcycle Safety Foundation's purpose is improving the safety of motorcyclists on the nation's streets and highways. In an attempt to reduce motorcycle accidents and injuries, the Foundation has programs in rider education, licensing improvement, public information, and statistics. These programs are designed for both motorcyclists and motorists. A national non-profit organization, MSF is sponsored by the U.S. motorcycle distributors: Honda, Yamaha, Kawasaki, Suzuki and BMW.

Declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the district director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as dutiable.

PART 123—CUSTOMS RELATIONS WITH MEXICO AND CANADA

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1602 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

2. Section 123.4(f) is amended by removing the reference “§ 10.1(f)” and adding, in its place, the reference “§ 10.1(i).”

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1602 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

Sections 145.35 through 145.98, 145.41, also issued under 19 U.S.C. 1498;

§ 145.35 [Amended]

2. Section 145.35 is amended by removing the words “an importer’s declaration on Customs Form 3361” and adding, in their place, the words “the declarations provided for in § 10.1(a) of this chapter”.

Carol Hallett,
Commissioner of Customs.

Approved: January 8, 1993.

Peter M. Nunes,

Assistant Secretary of the Treasury.

FR Doc. 93-1015 Filed 1-14-93; 8:45 am.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1215

RIN 2127-AE50

[Docket No. 92-40 Notice 1]

Use of Safety Belts and Motorcycle Helmets—Compliance and Transfer-of-Funds Procedures

AGENCY: National Highway Traffic Safety Administration, Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to implement the penalty provisions contained in section 153 of title 23, United States Code, as enacted by section 1031 of the Intermodal Surface Transportation Efficiency Act of 1991. Section 153 provides that a State that fails to adopt and put into effect motorcycle helmet and safety belt use laws before October 1, 1993 is subject to having the Secretary of Transportation transfer obligation authority from the State's Federal-aid highway programs to its apportionment under the section 402 safety program. This proposed rule sets forth the criteria to be used to determine a State's compliance with the Act and proposes the mechanism by which NHTSA will inform States of their compliance status.

DATES: Comments are due no later than March 1, 1993.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 am to 4 pm.)

FOR FURTHER INFORMATION CONTACT: Adele Derby, Associate Administrator for Regional Operations, room 5238, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2121) or Kathleen Demeter, Office of the Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834). Also, Miles Plosky, Office of Highway Safety, room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-6902 or Wilbert Bacaus, Office of the Chief Counsel, room 4230; Federal Highway Administration, 400 Seventh Street,

SW., Washington, DC 20590 (202) 366-0780.

SUPPLEMENTARY INFORMATION:

Background

Wearing safety belts and motorcycle helmets are two of the most effective actions the motoring public can take to reduce the incidence of death and serious injury from highway crashes. The best approach to increase safety belt and motorcycle helmet use is to pass effective State laws requiring motorcycle helmet and safety belt use, educate the public about the benefits of these safety devices, train law enforcement officers, and enforce use laws.

Section 1031 of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) (the Act) adds a new section 153 to Title 23 of the United States Code which authorizes a three year incentive grant program designed to promote the passage of, and compliance with, motorcycle helmet and safety belt laws. To be eligible for funding under the Act in the first year, a State must have in effect both a law requiring all individuals on a motorcycle to wear helmets and a law requiring individuals in the front seat of passenger vehicles to wear safety belts (or be secured in child passenger safety systems).

Continued eligibility for the grants is conditioned upon meeting specific compliance rates. To be eligible in the second year a State must achieve at least 75% compliance with its motorcycle helmet law and 50% compliance with its safety belt law. For the third year, a State must achieve at least 85% compliance with its motorcycle helmet law and 70% compliance with its safety belt law.

If a State fails to adopt and put into effect motorcycle helmet and safety belt use laws before the first day of fiscal year (FY) 1994 (October 1, 1993), section 153(b) directs the Secretary of Transportation to transfer funds from the State's Federal-aid highway programs under each of subsections 104(b)(1), (b)(2), and (b)(3) of title 23, U.S.C., to the State's highway safety program under section 402 of that title. The transfer will take place in the fiscal year succeeding the year in which the State is in non-compliance. A State not in compliance at the beginning of FY 1994 will experience transfer of 1 1/4% of its Federal highway construction funds for FY 1995. For non-compliance in FY 1995 and beyond, the transfer will rise to 3%. Any obligation limitation applicable to the transferred construction funds prior to transfer will

apply, proportionately, to those funds after transfer.

The transferred funds may be used for approved projects in any 402 program areas. The funds shall be used without Federal earmarking of any amounts or percentages for specific program activity. The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100%.

Proposed Compliance Criteria

To regulate the transfer process for FY 1995 and later years, the agency is proposing to apply criteria that are derived from the criteria that it employed in awarding incentive grants for FY 1992. A State that qualified for an incentive grant for FY 1992 would be considered in compliance for transfer purposes and any State not meeting those criteria on October 1, 1993, would be in non-compliance and subject to the transfer.

The law provides that, in order to avoid the funds transfer, a State must have in effect by October 1, 1993, a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet and a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

Section 153(i) contains the following definitions:

"Motorcycle" means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface;

"Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails;

"Passenger vehicle" means a motor vehicle which is designed for transporting 10 or fewer individuals, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal Motor Vehicle Safety Standard to be equipped with a belt system;

"Safety Belt" means: (a) With respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and (b) with respect to other

passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

Except for children in child restraint systems, the statute does not provide for any exemptions from application. However, NHTSA recognizes that all States have exemptions written into one or both of their motorcycle helmet and safety belt laws. NHTSA believes that Congress' intent to aid States in their efforts to achieve higher safety belt and motorcycle helmet use and enact and maintain use laws would not be served by reading the statute so literally as to impose a penalty upon all States whose laws contain any exemptions. On the other hand, some exemptions are either incompatible with the language of the statute or would so undermine the safety considerations underlying the statute that States whose laws contain such exemptions should be subject to the penalties contained in the Act.

NHTSA has reviewed current State laws and proposes to permit all of the existing exemptions, except those specified below. The exemptions that the agency proposes to permit cover persons with medical excuses; postal, utility and other commercial drivers who make frequent stops in the course of their business; emergency vehicles operators and passengers; persons riding in positions not equipped with safety belts; persons in public and livery conveyances; persons riding in parade vehicles; persons in the custody of police; persons in vehicles not required to have shoulder belts in front and passengers of certain larger, heavier vehicles. NHTSA also proposes to permit exemptions from current motorcycle helmet laws, such as for riders in enclosed cabs. In NHTSA's view these exemptions apply to situations in which the risk to occupants is very low or in which there are exigent justifications. NHTSA proposes to consider the following exemptions incompatible with the statute:

1. Motorcycle helmet laws of less than universal application, such as laws which apply only to minors or novice motorcycle operators;
2. Safety belt laws which exempt vehicles equipped with air bags.

A motorcycle helmet law that exempts a significant percentage of riders from its coverage is wholly inconsistent with the statute, and would result in large numbers of riders being exposed to serious risk. A law exempting persons in vehicles equipped with air bags would leave large numbers of persons at risk in side impact and rollover crashes, crashes for which air

bags provide little or no protection, and would diminish occupant protection even in frontal crashes.

NHTSA further proposes that any State considering an exemption other than those listed above should anticipate that the agency will review the exemption in accordance with these principles. An example of such an exemption would be a provision calling for secondary enforcement of a motorcycle helmet law. Under such a system the rider could not be cited for failure to wear a helmet unless stopped by a law enforcement officer for another reason. To date all motorcycle helmet use laws have been primary enforcement laws. NHTSA would consider a State helmet law with only secondary enforcement provisions non-complying because it is likely that helmet use in a jurisdiction with such a law would be significantly lower than the rate that is typical in States with primary enforcement laws. Every percentage point that is lost represents riders who will be at greater risk of fatal or serious injury.

Notification of Compliance

NHTSA proposes to notify all States of initial assessments of compliance with section 153 for FY 1994, by September 30, 1993. Each State initially found not to comply would have an opportunity to rebut this initial determination. The agency would notify all States by January 31, 1994, of its final determinations of compliance or noncompliance with section 153 for FY 1994.

For fiscal years 1995 and beyond, the agency proposes to notify States of initial assessments of compliance by September 15 of the fiscal year prior to the fiscal year for which compliance is being assessed (e.g., September 15, 1994 for compliance in FY 1995). Each State initially found not to comply would have an opportunity to rebut this initial determination. The agency would notify all States by October 10 of the fiscal year for which compliance is being assessed of its final determinations of compliance or noncompliance with section 153 for that fiscal year (e.g., October 10, 1994 for FY 1995).

Written Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR 553.21.) This limitation is intended

to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by March 1, 1993. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA and FHWA will publish a final rule responding to the comments. NHTSA and FHWA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 92-40; Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it will have no federalism implication that warrants the preparation of a federalism assessment.

This proposed rule would not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring the use of safety belts and motorcycle helmets through the potential transfer of Federal-aid highway funds to the 402 program. Any transfer of funds would not take place until FY 1995, and States can avoid the transfer of funds by enacting and enforcing conforming legislation. The statute does not establish a procedure for judicial review of the final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration nor is there any other administrative proceeding required before they may file suit in court.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not

"major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A Preliminary Regulatory Evaluation describing in detail the expected costs and benefits from the implementation of the Act has been prepared and placed in the docket. In short, NHTSA estimates that if all of the States without safety belt or helmet use laws were to pass such laws to avoid the transfer of funds 296 lives would be saved and there would be 7539 fewer injuries, including 4041 fewer serious injuries, each year. In terms of costs to the States, the States with conforming laws will incur no costs. States penalized will accrue a loss of highway construction funds, but these monies will remain in the State to be used in the State's 402 highway safety program. For many States this will result in a doubling (or more) of the States' available 402 funding. In any event, any costs to States resulting from the fund transfer are a result of the statute, not this rule and are avoidable by passage of the requisite usage laws.

The agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, we certify that this rule will not have a significant economic impact on a substantial number of small entities. The preparation of a Regulatory Flexibility Analysis is, therefore, unnecessary.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1215

Safety belts, Motorcycle helmets, Transportation, Highway safety.

In accordance with the foregoing, part 1215 of title 23 of the Code of Federal Regulations would be added as follows:

PART 1215—USE OF SAFETY BELTS AND MOTORCYCLE HELMETS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

Sec.

1215.1 Scope

1215.2 Purpose

1215.3 Definitions

1215.4 Compliance Criteria

1215.5 Notification of Compliance Status

1215.6 Transfer of Funds

1215.7 Use of Transferred Funds

Authority: 23 U.S.C. 153, delegation of authority at 49 CFR 1.50.

§ 1215.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 153, for

determining compliance with the requirement that States not having safety belt and motorcycle helmet use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

§ 1215.2 Purpose.

The purpose of this part is to clarify the provisions which a State must incorporate into its laws to prevent the transfer of a portion of its Federal-aid highway construction and highway safety construction funds to the section 402 highway safety program apportionment.

§ 1215.3 Definitions.

As used in this part:

Motor Vehicle means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

Motorcycle means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface.

Passenger Vehicle means a motor vehicle which is designed for transporting 10 or fewer individuals, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

Safety Belt means: with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

§ 1215.4 Compliance criteria.

(a) In order to avoid the transfer specified in § 1215.6 a State must have a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet.

(b) In order to avoid the transfer specified in § 1215.6, a State must have a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in the front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(c) A State that enacts the laws specified in paragraphs (a) and (b) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions or exceptions are consistent with the intent of paragraphs (a) and (b) of this section and apply to situations in which the risk to occupants is very low or in which there are exigent justifications.

§ 1215.5 Review and notification of compliance status.

(a) Review of each State's laws and notification of compliance status with 23 U.S.C. 153(h) for fiscal year 1994 shall occur in accordance with the following procedures:

(1) NHTSA will undertake, independently, to review appropriate State laws. NHTSA will notify States by certified mail of NHTSA's initial assessment of compliance with 23 U.S.C. 153(h) by September 30, 1993.

(2) If NHTSA initially finds that a State does not comply, the notice shall state the reasons for the noncompliance and shall inform the State that it may, within 30 calendar days of its receipt of the notice, submit documentation showing why it is in compliance. Such documentation shall be submitted to the Associate Administrator for Regional Operations, NHTSA, 400 Seventh Street, SW., Washington, DC, 20950.

(3) NHTSA will notify each State by certified mail of NHTSA's final determination of the State's compliance or non-compliance with 23 U.S.C. 153(h) by January 31, 1994.

(b) Review of each State's laws and notification of compliance status for fiscal year 1995 and beyond shall occur in accordance with the following procedures:

(1) NHTSA will undertake, independently, to review appropriate State laws. NHTSA will notify States by certified mail of NHTSA's initial assessment of compliance with 23 U.S.C. 153(h) by September 15 of the fiscal year prior to the fiscal year for which compliance is being reviewed.

(2) If NHTSA initially finds that a State does not comply, the notice shall state the reasons for the noncompliance and shall inform the state that it may, within 10 working days of its receipt of the notice, submit documentation showing why it is in compliance. Such documentation shall be submitted to the Associate Administrator for Regional Operations, NHTSA, 400 Seventh Street, SW., Washington, DC, 20950.

(3) NHTSA will notify each State by certified mail of NHTSA's final determination of the State's compliance or non-compliance with 23 U.S.C. 153(h) by October 10 of the fiscal year for which compliance is being reviewed.

§ 1215.6 Transfer of funds.

(a) If, at any time in fiscal year 1994, a State does not have in effect the laws described in § 1215.4, the Secretary shall transfer 1/4 percent of the funds

apportioned to the State for fiscal year 1995 under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect the laws described in § 1215.4, the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(c) Any obligation limitation existing on the transferred construction funds prior to transfer will apply, proportionately, to those funds after transfer.

§ 1215.7 Use of transferred funds.

(a) Any funds transferred under § 1215.6 may be used for approved projects in any section 402 program area.

(b) Any funds transferred under § 1215.6 shall not be subject to Federal earmarking of any amounts or percentages for specific program activities.

(c) The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100%.

Thomas D. Larson,
Administrator, Federal Highway
Administration.

Issued on: January 11, 1993.

Marion C. Blakey,
Administrator, National Highway Traffic
Safety Administration.

[FR Doc. 93-964 Filed 1-12-93; 10:44 am]
BILLING CODE 4810-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

25 CFR Part 52

PS-89-01

RIN 1545-A023

Exports of Chemicals That Deplete the
Ozone Layer; Special Rules for Certain
Medical Uses of Chemicals That
Deplete the Ozone Layer

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Notice of proposed rulemaking
and notice of public hearing.

SUMMARY: This document contains
proposed regulations relating to taxes
imposed on exports of chemicals that
deplete the ozone layer, taxes imposed
on ozone-depleting chemicals used as

medical sterilants or propellants in
metered-dose inhalers, and floor stock
taxes on ozone-depleting chemicals. The
proposed regulations reflect changes to
the law made by the Omnibus Budget
Reconciliation Act of 1989, the
Omnibus Budget Reconciliation Act of
1990, and the Energy Policy Act of 1992
and affect persons who manufacture,
import, export, sell, or use chemicals
that deplete the ozone layer. This
document also provides notice of a
public hearing on these proposed
regulations.

DATES: Written comments and requests
to speak at the public hearing scheduled
for Thursday, May 27, 1993, must be
received by March 16, 1993. Outlines of
oral comments to be presented at the
hearing must be received by May 6,
1993.

ADDRESSES: Send submissions to:
Internal Revenue Service, P.O. Box
7604, Ben Franklin Station, Washington,
DC 20044 (Attention: CC-CORP-T.R. (PS-
89-01), room 5348). In the alternative,
submissions may be hand delivered to:
CC-CORP-T.R. (PS-89-01), Internal
Revenue Service, room 5228, 1111
Constitution Avenue, NW., Washington,
DC 20224. The public hearing will be held
in the Commissioner's Conference
Room, room 3313, Internal Revenue
Building, 1111 Constitution Avenue,
NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Concerning the proposed regulations,
Ruth Hoffman, (202) 622-3130;
concerning the submissions, Carol
Savage, (202) 622-8452 (not toll-free
numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information
contained in this notice of proposed
rulemaking have been submitted to the
Office of Management and Budget for
review in accordance with the
Paperwork Reduction Act of 1980 (44
U.S.C. 3504(h)). Comments on the
collections of information should be
sent to the Office of Management and
Budget, Attention: Desk Officer for the
Department of the Treasury, Office of
Information and Regulatory Affairs,
Washington, DC 20503, with copies to
the Internal Revenue Service, Attn: IRS
Reports Clearance Officer, T:FP,
Washington, DC 20224.

The requirements for collection of
information in this proposed regulation
are in §§ 2.4682-2(b)(3) and (4),
52.4682-2(d)(4) and (5), and 52.4682-2(d)(3). This
information is required by the Internal
Revenue Service to verify compliance
with sections 4681 and 4682 of the


MOTORCYCLE RIDERS FOUNDATION, INC.


February 26, 1993

Docket Section, Room 5109
 National Highway Traffic Safety Administration
 400 Seventh Street, SW
 Washington, D.C. 20590

RE: Docket No. 92-40 Notice 1

I am writing on behalf of the Motorcycle Riders Foundation, Inc. (MRF) to offer comment on the Department of Transportation's proposed rule -- Docket No. 92-40 Notice 1 -- to implement the penalty provisions contained in section 153 of title 23, United States Code, as enacted by section 1031 of the Intermodal Surface Transportation Efficiency Act of 1991 -- Public Law 102-240.

On The Principle Of The Issue

I take issue with DOT's background statement that "*the best approach*" to increase motorcycle helmet use is to pass and enforce helmet use laws. Though such laws may be the most expeditious way to increase use, mandatory helmet laws trample on the rights, the difference of opinions, and the freedom-of-choice of individual motorcyclists. In America, being indifferent to the individuality of a person, not having respect for an adult to make responsible choices in their life and restricting an individual's right to free expression can not be condoned as being "*the best approach*." I contend this is the worst possible approach and MRF will continue to lobby Congress to repeal the penalty provision of section 153 of title 23, United States Code.

Specific Comments On The Proposed Criteria

DOT has proposed that automobile seat belt laws may have secondary enforcement provisions while requiring motorcycle helmet laws to have primary enforcement provisions.

The MRF strongly objects to the blatant discrimination DOT is exhibiting towards motorcyclists by establishing a double standard with regard to enforcement criteria of seat belt laws vs. helmet laws. The helmet law and the seat belt law requirements in the law are both addressed in the same subsection --(a)-- using identical language to set the base requirement for both: "*a law which makes it unlawful throughout the State the operation of...*" It appears the intent of the federal law is to have equal priority and enforcement applied to both state motorcycle helmet and automobile seat belt use laws.

INFORMATION ★ COMMUNICATION ★ ASSISTANCE

P.O. Box 1808, Washington, D.C. 20013-1808 • (202) 546-0983 • FAX# (202) 546-0986

If the intent of the law is to get the most people possible to wear seat belts and helmets, then both state motorcycle helmet and automobile seat belt use laws should require primary enforcement. If it is DOT's desire to have a lighter hand with regard to state automobile seat belt use laws, then DOT should provide motorcyclists equal treatment under the law and require only secondary enforcement provisions for state motorcycle helmet use laws.

According to the 1990 Fatal Accident Reporting System (FARS) there were 15 times more fatal crashes involving passenger cars (33,972) and light trucks (15,601) than fatal crashes involving motorcycles (3,270). The main causes of death in both car/truck and motorcycle fatal crashes are head and chest injuries. While a helmet can only protect a motorcyclist's head during a crash, a seat belt will help protect a car/truck driver from both head and chest injuries.

If the intent of the law is to protect as many people as possible from injury, then, due to the magnitude of injuries in car/truck crashes, state automobile seat belt use laws should be primary enforcement. But, if DOT is going to give any consideration to secondary enforcement provisions in this rule that consideration should be given to motorcyclists, who comprise a small minority of the nation's fatal accident victims.

It is discrimination for DOT to allow the segment of the motoring public that comprises the vast majority (84%-car/light truck-1990 FARS) of accident fatalities to be subjected to a lighter standard of enforcement under the same federal law as DOT is requiring the strongest standard of enforcement for the segment of the motoring public that comprises the smallest amount (6%-motorcycle-1990 FARS) of the nation's accident fatalities.

DOT states in the proposed rule that secondary enforcement motorcycle helmet use laws would likely result in significantly lower usage rates than primary enforcement laws, resulting in the need for primary enforcement requirement for motorcycle helmet use laws. Would not primary enforcement for automobile seat belt use laws result in significantly higher seat belt use? Applying the same logic to seat belt use laws that DOT is applying to helmet use laws results in only one logical conclusion: DOT should require states to enact automobile seat belt use laws with primary enforcement provisions.

If the issue is increasing usage of helmets and seat belts through mandatory laws, then DOT should require primary enforcement provisions in both motorcycle helmet and automobile seat belt use laws in order for states to be in compliance with the penalty provisions of section 153 title 23, United States Code. However, if DOT is succumbing to the potential political ramifications of requiring the states to have primary enforcement requirements for seat belt laws, then DOT should treat motorcyclists equally under the law and require only secondary enforcement with regard to state motorcycle helmet use laws.

If it is DOT's intention to implement this rule with the double standard intact, MRF requests DOT hold public hearings on this proposed rule prior to issuing the final rule.

Sincerely,

Wayne T. Curtin
Vice President, Government Relations


MOTORCYCLE RIDERS FOUNDATION, INC.

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H.R. 799
Sponsor - Congresswoman Snowe
Introduced February 3, 1993
Cosponsors

<u>Representative</u>	<u>Party/State</u>	<u>Notes</u>	<u>Date Signed-on</u>
Abercrombie, Neil	D-Hawaii		02/04/93
Allard, Wayne	R-Colorado		03/18/93
Applegate, Doug	D-Ohio	1,2	03/25/93
Bereuter, Doug	R-Nebraska		Original Cosponsor
Boehner, John	R-Ohio		Original Cosponsor
Burton, Dan	R-Indiana		Original Cosponsor
Buyer, Steve	R-Indiana		03/10/93
Clinger, William	R-Pennsylvania	1,2	04/22/93
Clyburn, James	D-South Carolina	1,2	03/10/93
Coble, Howard	R-North Carolina		04/29/93
Collins, Mac	R-Georgia	1,2	04/20/93
Cox, Christopher	R-California		03/16/93
Crane, Philip	R-Illinois		Original Cosponsor
Crapo, Michael	R-Idaho		04/20/93
Cunningham, Duke	R-California		04/21/93
Danner, Pat	D-Missouri	1,2	Original Cosponsor
Dickey, Jay	R-Arkansas		03/02/93
Doolittle, John	R-California		Original Cosponsor
Fawell, Harris	R-Illinois		Original Cosponsor
Filner, Bob	D-California	1	03/16/93
Frank, Barney	D-Massachusetts		Original Cosponsor
Franks, Gary	R-Connecticut		02/16/93
Gallegly, Elton	R-California		Original Cosponsor
Gillmor, Paul	R-Ohio		Original Cosponsor
Gingrich, Newt	R-Georgia	4	03/18/93
Goss, Porter	R-Florida		Original Cosponsor
Grams, Rod	R-Minnesota		Original Cosponsor
Grandy, Fred	R-Iowa		Original Cosponsor
Gunderson, Steve	R-Wisconsin		02/16/93

(Page 1 of 3)

INFORMATION ★ COMMUNICATION ★ ASSISTANCE

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<u>Representative</u>	<u>Party/State</u>	<u>Notes</u>	<u>Date Signed-on</u>
Hamilton, Lee	D-Indiana		02/04/93
Hancock, Mel	R-Missouri		Original Cosponsor
Hansen, James	R-Utah		Original Cosponsor
Hastert, J. Dennis	R-Illinois		Original Cosponsor
Hinchey, Maurice	D-New York		04/28/93
Hoke, Martin	R-Ohio		02/16/93
Hutchinson, Tim	R-Arkansas	1,2	03/10/93
Hyde, Henry	R-Illinois		02/04/93
Istook, Ernest	R-Oklahoma	1	04/28/93
Inhofe, James	R-Oklahoma	1	Original Cosponsor
Jacobs, Andrew	D-Indiana		Original Cosponsor
Kaptur, Marcy	D-Ohio		Original Cosponsor
Klug, Scott	R-Wisconsin		02/18/93
Kolbe, Jim	R-Arizona		02/18/93
Kopetski, Mike	D-Oregon		Original Cosponsor
LaRocco, Larry	D-Idaho		02/16/93
Lehman, Richard	D-California		Original Cosponsor
Lewis, Jerry	R-California		03/16/93
Lightfoot, Jim	R-Iowa		Original Cosponsor
Livingston, Bob	R-Louisiana		Original Cosponsor
Long, Jill	D-Indiana		02/16/93
Mann, David	D-Ohio		04/21/93
Manzullo, Donald	R-Illinois		02/16/93
McCloskey, Frank	D-Indiana		02/04/93
McHugh, John	R-New York		04/28/93
Minge, David	DFL-Minnesota		Original Cosponsor
Myers, John	R-Indiana		Original Cosponsor
Orton, Bill	D-Utah		Original Cosponsor
Pallone, Frank	D-New Jersey		Original Cosponsor
Peterson, Collin	DFL-Minnesota		Original Cosponsor
Penny, Timothy	DFL-Minnesota		Original Cosponsor
Petri, Thomas	R-Wisconsin	1,2,3	Original Cosponsor
Poshard, Glenn	D-Illinois	1,2	Original Cosponsor
Pryce, Deborah	R-Ohio		03/16/93
Ramstad, Jim	R-Minnesota		Original Cosponsor
Roberts, Pat	R-Kansas		04/20/93
Roemer, Tim	D-Indiana		Original Cosponsor
Rohrabacher, Dana	R-California		Original Cosponsor
Roth, Toby	R-Wisconsin		03/10/93
Royce, Ed	R-California		04/22/93
Sanders, Bernard	I-Vermont		03/10/93
Sensenbrenner, Jim	R-Wisconsin		Original Cosponsor

<u>Representative</u>	<u>Party/State</u>	<u>Notes</u>	<u>Date Signed-on</u>
Sharp, Philip	D-Indiana		Original Cosponsor
Skeen, Joe	R-New Mexico		04/20/93
Snowe, Olympia	R-Maine		Sponsor
Solomon, Gerald	R-New York		04/22/93
Spence, Floyd	R-South Carolina		02/18/93
Strickland, Ted	D-Ohio		03/10/93
Stump, Bob	R-Arizona		Original Cosponsor
Swett, Dick	D-New Hampshire	1,2	Original Cosponsor
Thomas, Craig	R-Wyoming		Original Cosponsor
Thurman, Karen	D-Florida		Original Cosponsor
Traficant, James	D-Ohio	1,2	04/28/93
Vucanovich, Barbara	R-Nevada		Original Cosponsor
Walsh, James	R-New York		03/10/93
Williams, Pat	D-Montana		04/21/93
Young, Don	R-Alaska		03/10/93
Zeliff, Bill	R-New Hampshire	1,2	Original Cosponsor
Zimmer, Dick	R-New Jersey		Original Cosponsor

Total Sponsors = 88 (Dem-29 Rep-58 Ind-1 States-36) Revised 04/29/93

Notes:

- (1) Member of Public Works and Transportation Committee (13)
- (2) Member of Surface Transportation Subcommittee (11)
- (3) Ranking Republican Member of Surface Transportation Subcommittee
- (4) Republican Whip

(Page 3 of 3)

**Statement Before the U.S. House of
Representatives Committee on Public
Works and Transportation, Subcom-
mittee on Surface Transportation**

**Subject: Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991**

Charles A. Hurley

May 4, 1993

INSURANCE
INSTITUTE
FOR
HIGHWAY
SAFETY

The Insurance Institute for Highway Safety is a nonprofit research and communications organization, supported by the nation's property and casualty insurers, that identifies and develops ways to reduce motor vehicle crash losses. I'm the Institute's senior vice president and, at this subcommittee's request, I'm submitting for the record information about a number of highway safety programs specified in the Intermodal Surface Transportation Act of 1991 (ISTEA).

ISTEA signaled an important change in national transportation policy. It set forth a regulatory agenda for the 1990s that's very positive. It called for numerous new programs, new regulations, and other measures -- complete with timetables for implementation -- to enhance highway and automobile safety. The challenge now is to keep all these new programs on track as they are being implemented.

Increasing Safety Belt Use: An important aspect of ISTEA is the carrot-and-stick measure that provides \$65 million over three years to encourage states to enact safety belt and helmet use laws. In addition, states with such laws must meet compliance criteria to remain eligible for special federal funds. The latter requirement is essential because we've learned so well that putting safety belt laws on the books is only the first step. Making the laws work is something else again. What's needed is vigilant follow-up, including lots of publicity and enough police enforcement to make motorists believe that there's a real chance they'll be ticketed for not buckling up.

I'd like to tell you about one state that's clearly on the right track. North Carolina had one of the first belt use laws in the country. For a while, it had the country's highest belt use rate. And now North Carolina has another first to its credit -- it's the first with a multiyear effort to increase belt use rates. Governor James B. Hunt and Insurance Commissioner James E. Long of North Carolina have invited the participation of the insurance industry in a comprehensive, five-year highway safety initiative being launched next week in three pilot areas of the state. Institute researchers will be working principally with the Governor's Highway Safety Office and the University of North Carolina Highway Safety Research Center on this program, the first goal of which is to demonstrate that high levels of safety belt and child restraint use in North Carolina can be achieved through enhanced law enforcement and publicity.

Achieving this goal requires a step-by-step approach. Motorists in the three pilot areas will be informed about the need to buckle up through two weeks of education and public information. Then there will be three weeks of intense ticketing for not buckling up. There will also be media saturation at the time and place of ticketing. This is not to say, however, that huge amounts of ticket writing will be needed to make the program work. In fact, the goal is to write fewer and fewer tickets as North Carolina motorists begin buckling up in ever greater numbers. Such an approach has been successful elsewhere, notably in Canada where belt use rates have climbed to higher than 85 percent.¹

Insurers have long been aware of this kind of evidence from other countries that higher belt use rates can be achieved. The industry has backed successful programs to increase belt use in Elmira, New York² and Modesto, California.³ But the North Carolina initiative is the first to go statewide, with insurers committing \$4.5 million to the project over five years.

We believe this initiative will provide substantial increases in belt use. As the program progresses, other highway safety goals including a reduction in alcohol-impaired driving will be added. The idea is to do such a good job in North Carolina -- and to document the benefits so well -- that officials in other states will want to replicate the program on their own, using their own money.

Helmet Laws and the Larger Context of Ensuring Decisions Based on Science: Another important program under ISTEA involves funds for states that enact and enforce motorcycle helmet use laws covering all riders. But a recent sequence of events in Arizona, related to an attempt there to enact a universal helmet law, points up the need to ensure that highway safety programs and policy decisions are based on sound scientific research. In brief, what happened in Arizona is that a thoroughly incompetent study from a Phoenix hospital was used to make the point at a legislative hearing that motorcycle helmets don't prevent head injuries and, therefore, helmet use laws aren't needed.⁴

Of course, we all know differently, and we've known differently for a long time. Few highway safety issues have been as thoroughly studied as motorcycle head injuries and what works to reduce them. Researchers have known for decades that helmets reduce the likelihood of head injuries -- an important finding because such injuries are the leading cause of motorcycle deaths.

Nevertheless, a proposed helmet use law in Arizona went down without a vote, in part because incompetent research was cited during a crucial hearing as fact.

Speed Limits and the Larger Context of Basing Decisions on Science: Another example of basing policy decisions on something other than fact involves a recently adopted resolution from the American Association of State Highway and Transportation Officials (AASHTO). This organization urges Congress to get out of the business of mandating speed limits and let the states decide. But the resolution is based on suppositions indicating that AASHTO itself has no business making decisions affecting highway safety. For example:

1. AASHTO contends that "motorists tend to drive at a speed which they perceive to be reasonable and prudent" without regard to posted limits. This is prescientific supposition that tries to get into drivers' heads. It isn't based on science. When travel speeds are studied empirically, what the research shows is that motorists do pay attention to speed limits. Study after study has shown that, when speed limits were raised on rural interstates in the late 1980s, travel speeds went up.⁵ Conversely, travel speeds went down in the mid-1970s in response to the national maximum speed limit of 55 mph.⁶ A 1992 survey of people 18 years and older found many people saying it's "acceptable" to speed a little on U.S. roads, but only about 5 percent thought it was acceptable to speed by more than 10 mph.⁷ The fact is, people may drive somewhat faster than posted limits, but most stay close enough to the limits so they think their chances of getting a ticket is small. Posted speeds thus establish upper limits that most motorists observe. If AASHTO's assertion were correct, then most motorists wouldn't have speeded up when speed limits were raised from 55 to 65 mph on rural interstates. Instead, motorists would have kept on driving at speeds they perceived to be reasonable and prudent. But what they did is speed up.

2. AASHTO contends that "appropriate speed limits can properly attract traffic to the safest highway facilities." The idea is that, by raising speed limits, substantially more motorists will be diverted from arterial highways to interstates, which indeed are built to a higher design standard. But there's no empirical evidence of such a diversion. On the other hand, there is evidence of an increase in deaths when speed limits were raised during 1986 on rural interstates. Deaths began climbing on these roads as soon as speed limits were raised.⁸ The actual death counts were 1,958 (1986), 2,294 (1987), 2,644 (1988), and 2,605 (1989). As expected, deaths on the rural

interstates began leveling off a year or two after speed limits were raised. What's important is that they leveled off at a higher number than before. They didn't decline to what they were before speed limits were raised.

3. AASHTO contends that "speed limits set arbitrarily below the reasonable and prudent speed perceived by the public . . . divert traffic to lesser routes." Again, there's no evidence at all to support this. It's speculation with no scientific basis.

4. AASHTO contends that "the intermittent application of 65 and 55 mph speed limits in the vicinity of urban areas creates confusion among motorists." Once again, this represents a prescientific attempt to read drivers' minds. There's no scientific evidence of motorist confusion.

5. AASHTO contends that "the majority of the interstate system was designed and constructed for speeds up to 70 mph." This represents a misunderstanding of what a highway design speed really is. It's the maximum safe speed under ideal conditions, not the speed motorists should routinely travel. Where speed limits are posted at 65 mph, many motorists are traveling faster than 70. In New Mexico, for example, 40 percent of passenger cars on rural interstates are going faster than 70 mph. In Virginia, 29 percent are going faster than 70.⁹ Both of these states have 65 mph posted limits, but in Maryland the speed limit on rural interstates is still 55 mph and only 7 percent of passenger cars go faster than 70.

Carefully designed scientific studies should be what highway officials use to set policy. But instead, they too often heed incompetent studies or rely on intuitive speculation. What can this subcommittee do to help ensure that science is the basis of highway safety decisions? At the least, use funding of state highway safety programs to help guarantee the qualifications of people who fill relevant state offices. This isn't a field of luck, faith, and magic. It's not true that anyone who can drive a car is qualified to represent highway safety interests. We need steps to ensure that everyone who represents such interests in state offices is qualified to do so.

Antilock Brakes on Big Truck Rigs: This subcommittee is primarily concerned with highway safety programs, I know, but a number of important vehicle regulations are also addressed in ISTEA. One is antilock brakes for big trucks. After years of government delays, ISTEA called for rulemaking to begin by May 31, 1992. But all the Department of Transportation did by then was

issue an advanced notice of proposed rulemaking. This is hardly enough. We've all waited far too long. Antilock brakes are needed, and they're needed now. They're required on big trucks in Europe, Australia, and Japan.¹⁰ The Department of Transportation should get on with it.

Radar Detectors: Almost three years ago, the Institute joined with seven other organizations (Advocates for Highway and Auto Safety, American Automobile Association, American Trucking Associations, International Association of Chiefs of Police, National Association of Governors' Highway Safety Representatives, National Safety Council, and Public Citizen) to ask the Department of Transportation to ban radar detectors in big truck rigs. At the time, we cited research showing that at least 40 percent of tractor-trailers on U.S. interstate highways in seven eastern states, and nearly half of trucks hauling hazardous materials, were using radar detectors. A later study that included western and midwestern states showed 59 percent of tractor-trailers using radar detectors.¹¹

The Department granted the joint petition very quickly, began the rulemaking process, and then . . . nothing. As Senator Lautenberg noted at a recent hearing, the comment period for this rulemaking has been closed for a year. But there's still been no action. This is another instance in which the Department of Transportation needs to move forward -- and move forward now.

Conclusion: The scientific approach to highway safety has fostered some important progress in the field. Future progress will depend on applications of scientifically evaluated countermeasures -- not faith, hope, or prescientific assumptions. In fact, highway safety problems require the same professional approach that traditionally has been applied to other public health and medical problems. We wouldn't settle for misguided amateurism with respect to our nation's cancer programs, for example, and we shouldn't settle for it in the field of highway safety, either.

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Statement of the
American Traffic Safety Services Association
to the
Subcommittee on Surface Transportation
Hearing
on
Highway Safety Issues and the Implementation
of the Intermodal Surface Transportation
Efficiency Act of 1991



Presented by: Fred Johnson
President, American Traffic Safety Services Association

American Traffic Safety Services Association
5440 Jefferson Davis Highway
Fredericksburg, VA 22407
Phone: (800) 272-8772 Fax (703) 898-5510

103rd Congress
May 4, 1993

Mr. Chairman and members of the Subcommittee, I am Fred Johnson, national president of the American Traffic Safety Services Association (ATSSA) and president of Lectric Lites Co., Inc., in Ft. Worth, Texas. I am pleased to respond to your invitation asking for our views on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) as it relates to highway safety.

ATSSA is a national trade association in its 23rd year representing nearly 1,000 companies and individuals in the traffic control industry. Most of the traffic safety equipment and services used on our highways are provided by ATSSA members. Our membership also includes public officials at all levels of government who are concerned with traffic control and the safety of the motoring public. We are in a unique position to offer suggestions on the sections of the ISTEA addressing highway safety.

Specifically, I would like to make some recommendations in areas of:

**SAFETY MANAGEMENT SYSTEM (Section 1034)
WORK ZONE SAFETY PROGRAM (Section 1051)
UNIFORMITY OF STANDARDS FOR TRAFFIC
CONTROL DEVICES
SAFETY FIRST-"READY TO GO" PROJECTS**

SAFETY MANAGEMENT SYSTEM (Section 1034)

The DOT has issued a proposed rule on the Safety Management System (SMS), but it does not include specific guidelines on how to implement the program. In order to allow the states' latitude, the rule does not include any reference on how-to requirements. General endorsements of systems do not ensure their existence. While we appreciate the need for flexibility, we find the broad-based areas of consideration defined by FHWA are inadequate because there are no guidelines for implementation.

Primarily, there are no inventory or inspection systems set up within the safety management program. Without bridge and pavement inventories, there would be no bridge and pavement management systems. These systems have been very effective as a result of incorporating inventories, routine evaluation, inspections, and systematically correcting deficiencies. We question whether there can be a safety management system without sign, pavement markings, and safety hardware inventories.

In its "Road to Better Signing" program, the FHWA recommends that states have sign replacement programs that include a system of inventories, routine inspections, and annual replacement programs. This will not happen automatically, and states need guidance on establishing programs of this nature. In spite of FHWA's endorsement of inventory systems, when ATSSA recently surveyed state DOTs on sign inventories (*Attachment A*), the results were discouraging. Of the 43 responses received, only 23 states had inventory systems; only 22 had a sign performance review process to assess both day and night performance on a routine, systematic basis. Without guidelines, signs and pavement markings assessments will continue to be more random than scientific, and the sign deficiency rate will continue to be cited by the FHWA at 30 to 50 percent.

It is essential that existing traffic control devices, pavement markings, hardware such as guardrails, impact attenuators, and sign posts be maintained in a timely manner. Accordingly, the SMS should include appropriate inventories, annual inspection and replacement programs, including daytime and nighttime performance evaluations, and routine and systematic replacement when the service life has expired. The evaluation phase should include the condition of the device as well as its effectiveness in meeting the needs of the driver.

A technical amendment that was part of the 1993 Transportation Appropriations Act requires the Secretary of Transportation to establish a standard for inclusion in the MUTCD for a minimum level of retroreflectivity for signs and pavement markings. It will also include a standard to define which roads must have center lines, edge lines or both. This amendment will have a significant impact on highway safety by promoting the replacement of worn out and ineffective signs and pavement markings and by standardizing the classification of roads that are to be marked.

A major FHWA research effort to determine minimum levels of retroreflectivity based on motorists' needs has been completed, and mobile equipment prototypes are being used successfully. **To ensure that pavement marking and signs are maintained at an acceptable level of visibility, we would recommend that Congress expedite this process by providing a date when this standard should be established. We would further recommend that all paved roads be marked with center lines and edge lines based on average daily traffic (NCHRP Report 138 provides suggestions for pavement marking applications.)** Pavement markings are reported to have a benefit/cost ratio of 60/1. The benefit of well-maintained markings is so great that this standard should be implemented as part of the Safety Management System.

In order to implement any such revisions to the MUTCD and to satisfy any new rules promulgated with minimum standards for retroreflectivity of signs and pavement markings, and the placement of markings, **we ask that funding be set aside for local agencies specifically for this effort.**

WORK ZONE SAFETY PROGRAM (Section 1051)

Improved Work Zone Safety

Section 1051 of the ISTEA states that the Secretary shall develop and implement a work zone safety program to improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety aperturances, traffic control plans, and bidding practices for devices and services.

Last May, the National Transportation Safety Board released its findings after a three-year study on "Highway Construction Work Zone Safety" identifying crucial inadequacies that contribute to the rising fatality and accident rates in highway construction zones.

The Safety Board's study revealed accidents in which traffic control techniques and devices were "clearly not in compliance" with existing guidelines. The Board expressed concern about the "adequacy of traffic control plans" and questioned whether the FHWA placed enough emphasis on recurring problems. The Safety Board recommended that the FHWA, AASHTO, and other transportation officials develop a national program to strengthen compliance with existing guidelines, and also that states should use funds earmarked for construction to monitor compliance.

ATSSA recommends that the following elements be included in any work zone safety management program:

1. The 1990 Annual Work Zone Report from the FHWA indicates that the limited number of trained personnel is a problem and that the high rate of turnover in government agencies and the private sector results in a constant need to provide training. A number of states now require some degree of certification of worksite traffic supervisors, but all states should require this. **Therefore, we recommend that a major component of a national Work Zone Safety Program would require each state highway department to designate, and require the contractor to designate, for each project, a person trained and certified who will have the responsibility and authority for assuring that the provisions of the Traffic Control Plan (TCP) and other safety aspects of the work zone are effectively administered.**

Education and training of persons responsible for work zone traffic control are of utmost importance to the members of our association. In 1977, ATSSA initiated a certified Worksite Traffic Supervisor (WTS) Program developed as a joint effort with the Institute of Transportation Engineers (ITE) and the Federal Highway Administration (FHWA). To date, over 9,000 people have completed our training program and over 2,000 are currently certified. Twelve states require ATSSA certification on at least some projects.

The ATSSA WTS program sets industry standards that have resulted in an upgrading of the quality of work zone traffic control. When we refer to the need to provide training for work zone personnel, we note that standards should be formulated and adopted with due regard to the current training and certification program of ATSSA and should be equivalent or superior to this program.

2. Whenever possible, each state highway department should use individual bid items for providing, installing, moving, replacing, and maintaining traffic control devices and safety systems. If lump sum procedures are used, the contract documents must include a procedure for payment for additional work, devices, or changes. Also, on all projects state highway agencies are encouraged to include a penalty provision to be applied for days or periods of time when the traffic control is not in compliance with the Traffic Control Plan. Whatever method of payment is used, it is important that there be an ongoing review of procedures as problems and concerns develop. The most successful systems result from joint development and review by both the agency and industry.

3. Section 120(c) of the ISTEA allows for 100% federal funding for certain safety improvements that have a significant cost/benefit ratio in terms of lives saved for money spent. This provision is important for states with matching fund problems. It can mean that important safety improvements can be made without delay while states find the funding. **In order to encourage states to use superior traffic control devices and procedures and reduce serious losses now occurring in work zones, 100% federal funds should also be made available for work zone traffic control.**

4. Each state highway department should be required to collect uniform data on all work zone accidents. Such data should include the type, design, and operational characteristics of work zones in which accidents have occurred; the type of roadway; traffic volume; the nature of the accident; and the extent of the damage, injuries, or fatalities sustained. Each state highway department should

also analyze and use this information to correct deficiencies and improve future traffic control plans.

5 . The Secretary of Transportation should conduct annual reviews of work zone safety practices and policies, both state-by-state and on a national level, in order to determine the effectiveness of each state's work zone safety practices. The results of such inspections, reviews, and assessments should be reported annually and distributed to the states so successful practices can be acknowledged. Successful techniques could then be incorporated by states that have higher work zone fatalities and accident rates so that those rates could be reduced.

6 . The FHWA has determined that Part VI of the MUTCD needs to be revised to improve the application and uniformity of traffic control devices and the safety of workers, pedestrians, and motorists in work zones. Responding to petitions from ATSSA and other organizations, the FHWA has speeded up the process for revising Part VI, and we understand it will be published this fall. We commend the FHWA for their efforts to speed the process and provide critical information to the users of Part VI, and we recommend that the present draft of Part VI of the MUTCD be adopted after appropriate consideration of the comments received and processed through the final rulemaking procedure and published as a separate document as soon as possible.

UNIFORMITY OF STANDARDS FOR TRAFFIC CONTROL DEVICES

Consistent, uniform standards for traffic control devices should apply to all classifications of roadways regardless of jurisdiction or user agency. Unfortunately, this is not the case. The Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways presents a national standard governing the design and use of all traffic control devices. However, it is not uniformly applied or enforced, particularly off the federal-aid highway system. Indeed, since the Secretary of Transportation is not legislatively required to promulgate the standards, there is a question as to whether the Department of Transportation even has the authority to enforce the provisions of the MUTCD.

To clarify this situation and provide for uniformity and strict enforcement of the provisions of the MUTCD, ATSSA recommends:

The Secretary of Transportation be specifically required to promulgate standards and practices for the design and use of traffic control devices on all roads and streets open to public travel. The location and design of all traffic control devices shall conform to uniform national standards and practices as promulgated by the Secretary and revised periodically to accommodate the state-of-the-art.

SAFETY FIRST--"READY TO GO" PROJECTS

ISTEA continues the commitment of the federal government to improve safety on the roadways. This committee showed its commitment by including many of the provisions in the Act that speak directly to safety. Setting aside 10% of the STP funds for safety construction activities is an important step. Unfortunately, analysis of the program shows that safety construction spending by the states in FY 92 is

lower than in previous years. Of the total ISTEA funds obligated, safety obligations fall below their proportional share: Of the total STP funds that are obligated, only about 6% have been used for safety. We need to examine why and what can be done to encourage more emphasis on safety at the state and local level.

In his economic stimulus plan, the President had asked Congress to provide an additional \$2.9 billion for highway and bridge projects that could be put under contract within several months. We support the full funding of ISTEA, and hope that Congress will be able find a way to pass this vital part of the stimulus package. ATSSA would recommend that this additional funding could be used toward labor intensive and cost-effective safety improvements that could begin immediately and are crucial to highway safety.

Highway and traffic signs are a key element in providing the motorist with guidance, warning and regulatory information that directly impacts highway safety. Safety experts agree that 90% of the information that the motorist receives and reacts to is visual, still the FHWA (*Road to Better Signing*, March 1990) reports that 30% of the signs currently in place may be deficient and not meeting the motorist's needs. Some estimates indicate that as many as 53 million signs need upgrading; yet, while some state and local highway agencies may have annual programs for replacement of worn out signs, they are rarely funded to meet the needs of the motorist.

Replacing non-performing signs on the Interstate and appropriately signing the National Highway System roads could put people to work immediately while having the high pay-off of a cost-effective accident countermeasure. In addition, a program similar to the project in Section 1061 of the ISTEA, which provides for training and sign replacement in Arkansas, could be implemented in all states.

In the recent ATSSA sign survey, states revealed that a total sign replacement program nationwide now costs only an average of \$138 million per year on the state systems. This is a very meager \$2.7 million per state. Non-state roads have even more severe signing needs, with the nature of these signs being warning and regulatory. If we only replaced the very worst 15% of the deficient signs, we estimate states could use an additional \$1.08 billion; half of that cost would go towards labor.

Pavement markings are not maintained on a day/night, year-round basis. As with sign replacement, this work is highly labor intensive. Durable marking materials are cost-effective on moderate to high volume roadways, and projects could be implemented quickly.

Projects could be implemented based on grants to states requesting specific improvements on indicated routes or on highways by functional classification. ATSSA would recommend that all-weather pavement markings be made a high priority. With the U.S. fatality rate three times higher at night than during the day, it is clear that driver dependence on traffic control devices for guidance increases as visibility decreases.

Checking with a few selected states, we found that \$1 million to \$9 million could be used immediately to upgrade pavement markings. Using an average of \$4 million per state, \$200 million could be allocated for the state system only. Local road requirements are unknown, but they suffer from more neglect. A minimum of \$200 million at least is needed. We estimate that states could use an additional \$400 million very quickly for additional striping for state and local roads using "fast track" administrative procedures. About \$120 million of this would be in labor costs.

Other Safety Improvements

The following additional safety improvements could be implemented quickly and make our highways safer:

- o **Guardrail and median barrier upgrades; replacing turndown guardrail ends and sub-standard barriers.**

There are more than 150,000 miles of guardrails along the nation's nearly four million mile highway system. The upgrading of median barriers has the second highest benefit-cost ratio in the industry, capable of reducing fatal accidents with fixed objects by 59%. Upgrading guardrails ranks fifth and could reduce fatalities as a result of impact with fixed objects by 38%.

Replacement of 300,000 sub-standard terminals with crashworthy devices would create 1,500 jobs, mostly new, with a cost of less than \$2,500 per location, an additional \$750 million could be spent, providing work for nearly two years.

- o **Installing anti-glare devices on median barriers.**

Installing anti-glare devices atop existing barriers would instantly remove the risks caused by blinding headlights from oncoming traffic in adjacent lanes as well as in highway work zones.

- o **Retrofitting utility poles that are within ten feet of the roadway.**

Retrofitting rigid utility poles, which account for 10% of the country's traffic fatalities with fixed objects, would significantly reduce the incidence of death and injury.

- o **Installing energy absorbing protection at piers, gores, toll booths, and other fixed objects.**

Impact attenuators (devices that absorb the impact of collisions) have the ninth highest benefit-cost ratio in the industry, and the possibility of cutting fatal accidents with fixed objects by 36%. If 50 states protected only 100 locations, these 5,000 units could cost states between \$20 - \$100 million depending on the hazard and the protection chosen.

- o **Bridge railing and bridge transition upgrades**

As of October 1992, a survey of 50 states showed that 206,900 of 600,750 bridges on our interstate highways and secondary roads were below standard in the bridge railing and transition category.

Federal funding would jump-start these and other projects, providing opportunities for employment and generating new orders for manufacturers and suppliers.

These types of projects on our nation's roadways do not require engineering or environmental impact studies. They can begin immediately, would put people to work, and would be highly visible to the millions of motorists who travel the highways each day.

Making highway safety improvements such as these will create jobs, will help renew our nation's infrastructure and reassert our historic competitiveness.

And these improvements will save lives.

Sign Replacement and Refurbishing Programs: Inventory and Process Survey

May 1992



American Traffic Safety Services Association
5440 Jefferson Davis Highway
Fredericksburg, VA 22407
(703) 898-5400 FAX (703) 898-5510

Sign Replacement and Refurbishing Programs: Inventory and Processes Survey

**American Traffic Safety Services Association
March 1992**

INTRODUCTION

The Federal Highway Administration (FHWA), state agencies and other highway safety professionals have been concerned regarding the condition of many of the signs on the nation's streets and highways. Studies have documented the needs of the visually impaired and older driver especially at night. Many signs are not replaced when they lose their retroreflectivity and many times even the daytime appearance has deteriorated to the extent that the color is no longer recognizable.

As a result of its "Road to Better Signing Programs", the FHWA has recommended that states have a sign replacement program that includes a system of inventories, routine inspections and annual replacement program. The FHWA has completed research and intends to develop minimum maintained levels of retroreflectivity to be incorporated into the Manual on Uniform Traffic Control Devices.

NCHRP Study 5-11 "Implementation Strategies for Sign Retroreflectivity Standards", prepared by Bellomo-McGee, Inc., for the National Cooperative Highway Research Program, investigated the economic consequences of establishing minimum retroreflectivity standards. It included a data collection effort to assess the nation's traffic signs. It also included data and information on the status of inventories, type of sheetings used, and minimum retroreflectivity criteria.

PURPOSE AND SCOPE

The purpose of this ATSSA initiative is to document the status of sign inventories, policies and programs for maintaining signs in a condition that will serve the motorist in both day and night time conditions. The goal is to share the experiences and practices of the states with each other, provide ATSSA members with a current practices report and furnish the FHWA with appropriate recommendations.

The survey consisted of a questionnaire sent to each State Traffic Engineer seeking information concerning sign inventories, sign procurement and budget, and sign inspection, maintenance and installation practices.

DISCUSSION OF RESULTS

I. Sign Inventories

Of the 43 responses received, 23 states have some inventory system and 20 do not. The states that do have inventories have them on all their systems, except, in some cases, on the urban systems. Four states reported using statewide inventories and 13 states reported inventories that are managed and maintained by individual districts. Four other states describe circumstances where the districts gather the data and submit it to the central office; the information is shared by both the central office and the district for management purposes. Based on the comments received and the discussion by the states, it appears either system can work very well to meet the needs of the state.

Inventories are computerized or partially computerized by 23 states. It is important to note that many states are upgrading to fully computerized operations. States that are planning and implementing inventories are utilizing computer systems and, most importantly, considering the state's existing computerized data bases.

II. Sign Procurement and Budget

The results indicate that most states fabricate their signs in their own sign shops except signs that are part of construction projects. Of the 43 states reporting, 23 report more than 80% of their signs are fabricated in state sign shops and 18 report more than 90% are prepared in state sign shops. Signs that are part of a rehabilitation reconstruction contract are normally part of that contract as well as major freeway sign replacement and refurbishment projects. However, the responses to this question were very inconsistent, indicating that the question was frequently misunderstood. Consequently, the individual responses are not considered reliable and are not reported.

A total of 43 states reported spending \$137,744,673 for the replacement and refurbishment of highway and traffic signs. The estimated percentages for labor, sheeting and substrate are difficult to analyze. Overall, it appears that about 50% of the cost of sign replacement is labor and the rest is sheeting substrate and posts. However, the responses to these questions were also very inconsistent and are not considered reliable. The individual responses are not reported. This subject should be further reviewed on a state by state basis if this matter warrants further analysis.

States reported the sums of money annually allocated to obtaining, replacing, and refurbishing signs. The survey results indicated that the funds are generally allocated on a needs basis and not a formal programming development process that is typical of allocating funds to specific highway improvement projects. Comments from the states are included in the attachment and should be reviewed individually.

III. Sign Inspection, Maintenance and Installation

Of the states reporting, 22 report a systematic procedure for measuring, monitoring and reporting sign performance and condition. States are using retroreflectometers, as well as visual methods for checking the condition of their signs. It is apparent that the states fully recognize the need for retroreflectivity and many states specifically note the requirement for nighttime inspections and the use of instruments.

Most signing replacement and refurbishment is done by state forces except when the signing is part of roadway construction or reconstruction. Typically, when signs are replaced as a part of a construction project they are included in the contract for the repaving or reconstruction.

IV. General Information

States' comments under General Information are included. These comments are very positive and indicate a keen awareness of the need for good highway and traffic signs and the need for improved systems.

RECOMMENDATIONS

1. It is recommended that all states develop sign inventories for all highway systems. These inventories should be computerized with routine updates as signs are replaced, updated and modified.
2. Each state should have a systematic process for routine sign performance inspection and reporting. These inspections should include both day and night reviews and reporting. The methods of performance review can include visual, handheld instruments, and the mobile instruments that are being developed. It is important to note that mirrors, bright quartz spot lights and deteriorated samples of sign face material have all been used successfully for measuring sign face performance.
3. ATSSA members should meet with state officials on a routine basis and discuss signing programs and needs.

ATSSA SURVEY

Sign Replacement and Refurbishing Programs

1. SIGN INVENTORIES

1. Does your department maintain an inventory of highway signs?

Yes (23)

AZ, CA, CO, CT, HI, IL, MA, ME, MI, MN, MO, NH, ND, NM, OR, RI, SD, TN, UT, VA, VT, WA, WY

No (20)

AK, AR, DE, FL, GA, IA, KS, LA, MD, MS, NC, NE, NJ, NV, NY, OH, OK, SC, TX, WV

2. Please check the highway classifications or systems that are included in your sign inventory.

State	Interstate	Primary	Federal Aid Secondary	State Secondary	Urban
AZ	X	X	X	X	X
CA	X	X	X	X	X
CO	X	X	X	X	
HI	X	X	X	X	
IL	X	X			
ME	X	X	X	X	
MI	X	X	X*	X*	X
MN	X	X	X	X	X
MO	X	X		X	X
NH	X	X	X	X	
ND	X	X	X	X	
NM	X	X	X	X	X
OR	X	X	X	X	X
TN	X	X	X	X	
UT	X	X	X	X	X
VA	X	X			
WY	X	X	X	X	

*Non-Freeway

Vermont - No breakdown. Simply by state route number and interstate.

3. Is your sign inventory maintained statewide, by district or other geographic location?

Statewide (4)

MO, NH, RI, VT

District (13)

CA, CO, CT, HI, MA, MN, MO, ND, OR, SD, UT, VA, WY

Arizona - The inventory is statewide but the data is input by the four engineering districts and the interstate sign crews.

Illinois - The freeway signing inventories are maintained by the Central Bureau of Traffic and the Central Sign Shop. Standard sign inventories are maintained by the districts.

Michigan - Statewide maintenance for freeway routes and by district for non-freeway routes. However, we are moving toward a statewide centrally accessed system for reporting purposes for all routes.

New Mexico - Inventory maintained in the general office at Santa Fe. Districts have copies of respective relevant information.

4. Is your sign inventory computerized?

Yes (11)

AZ, CO, CT, MI (non-freeway), ND, RI, SD, UT, VT, WA, WY

No (4)

HI, ME, NH, OR

Partially (9)

CA, IL, MD, MI (freeway), MN, MO, NM, RI, VA

5. Any other comments on the features of your sign inventory system?

Arizona - The inventory is an IMS based on data base on an IBM mainframe.

California - Computerized system in development

Connecticut - The department is in the process of developing a videodisc sign inventory system.

Illinois - Five districts have computerized inventory systems on line. One district is in the process of implementing the system. Three districts have manual inventory systems. The Central Sign Shop is in the process of updating their computerized system for freeway signs.

Iowa - Iowa does not have a "sign inventory" as such. They do have records of signs in place by intersection signing diagrams, correspondence files, plans, photo file and videodisc.

Kansas - The only present type of inventory is a features inventory which identifies a sign or a group of signs at a location (reference point) as either regulatory, warning or guide, but does not tell whether the sign is a specific sign.

Louisiana - Louisiana is in the process of inventorying a short section of the interstate system in Baton Rouge using software recently purchased.

Massachusetts - Major guide signs are not currently inventoried.

Michigan - Michigan is working toward an automated drafting system for producing a freeway sign inventory from our plans after each project has been let to contract. The non-freeway system is currently in the computer but requires an update system for printing data and producing graphics on a statewide basis due to lack of disk storage.

Minnesota - Computer inventory of in-stock signs, not for in-service signs.

Nebraska - Presently the only inventory system used by the Department of Roads is photo log.

New Hampshire - New Hampshire is designed for field maintenance procedures only. Not possible to utilize for other sources.

New Jersey - NJDOT is now in the process of developing a G.I.S. sign inventories program for all highway signing under NJDOT jurisdiction. The system will be self-maintained with input from design, construction, traffic engineering and maintenance.

New Mexico - Inventory partially in CADD (65% of state system).

North Dakota - The sign inventory is very helpful to determine what signing is in place when we receive complaints from motorists. Also Design Division uses it when resigning where we have a project improvement.

Ohio - Development has begun on a computer based sign inventory program. Once implemented, the inventory will be maintained at the district level. All highway classifications will be included.

Oregon - Oregon is planning to consider using the FHWA computer inventory and sign management program. They are looking at adding a graphics section into the program before implementing it statewide.

Rhode Island - Not fully implemented.

Tennessee - Interstate sign refurbishing has been accomplished by contract since 1975. The inventory is kept by updating the signing plans. Daytime inspections are made by headquarters maintenance personnel using a 200,000 candle power light. Inspections are made and contracts are let on a three year cycle.

In 1985 Tennessee began a signing upgrade program on state routes for the state primary and secondary highway systems. At this time they have completed or have under contract, signing upgrade projects for 37 of the 95 counties in Tennessee. Due to our manpower situation, this work has been accomplished through consultant engineers and let to contract which has resulted in the following:

1. Signing inventory tied to our log mile reference system.
2. Removal of unwarranted signs.
3. The replacement of signs and posts in poor condition.
4. Bringing signing up to current MUTCD standards.

The computerized sign inventory is a database using Dbase 5000 software on IBM compatible hardware. The consultants use the database to produce sign schedules for the construction contracts as well as the final inventory.

Utah - Currently being evaluated and upgraded.

Vermont - It is adequate but cannot compute sign square footage, even when dimensions are entered. Square footage numbers would be helpful.

Virginia - A statewide computerized traffic records system has been developed with implementation planned over the next few years or so. This will provide a unified computerized system for use by all districts.

Washington - Washington is currently developing a new system.

SIGN PROCUREMENT AND BUDGET

1. Please estimate the percentage of your department's finished street and traffic signs that are obtained through:

- A. State Highway Sign Shops
- B. Private Contractors
- C. In-State Prison Industries
- D. Other Prison Industries
- E. Other Sources (please specify)

The responses to this question were very inconsistent, indicating that the question was frequently misunderstood. The responses are not reported here and it is recommended that individuals interested in this information should contact specific states.

2. Please estimate the total annual allocation of funds for obtaining, replacing and refurbishing signs.

AK	\$500,000
AR	2,875,500
AZ	1,250,000
CO	7,366,000
CT	1,401,149
DE	1,182,000
FL	5,683,946*
GA	2,700,000
HI	290,000
IA	3,000,000
IL	2,594,000
KS	750,000
LA	900,000

MD	\$8,259,377
MI	7,000,000
MN	2,000,000
MO	10,000,000
MS	2,700,000
NC	14,000,000
ND	890,701
NE	4,400,000
NH	270,000
NV	440,000
NY	6,000,000
OH	9,000,000

OK	\$6,000,000
OR	3,500,000
RI	450,000
SC	9,000,000
SD	1,016,000
TN	4,600,000
UT	550,000
VA	12,700,000
VT	376,000
WA	1,200,000
WV	2,000,000
WY	900,000

*Florida (state forces)

Total of states reporting \$137,744,673.

California - \$5 million for new and replacement signs and \$9 million for replace and refurbish

Maine - \$600,000 state maintenance and \$800,000 for interstate updates.

New Jersey - \$500,000 materials plus \$300,000 labor and fabrication plus new construction projects.

3. Please estimate the percentage of the above figure allocated for labor, sheeting, substrate, posts, hardware and illumination.

The responses to this question were also very inconsistent, indicating misunderstanding. Consequently, the responses are not reported and it is recommended that interested parties should contact individual states.

III. SIGN INSPECTION, MAINTENANCE AND INSTALLATION

1. Does your department have a sign performance review process to assess both day and night performance on a routine, systematic basis?

Yes (22)

AR, AZ, CA, CO, FL, GA, HI, IA, KS, MD, MN, MO, MS, NC, NY, OH, SD, TN (partially), TX, UT (partially), VA, WY

No (19)

AK, CT, DE, IL, LA, ME, MI, ND, NE, NH, NJ, NM, NV, OK, RI, SC, VT, WA, WV

2. If "yes", can you please describe the process and equipment used to measure performance.

Arizona - We use a retroreflectometer on a spot check basis based upon semi-annual visual inspections.

Arkansas - Routine inspections are performed visually during daytime and nighttime inspections.

California - One night and one daytime review annually - subjective only.

Colorado - Part of regularly scheduled maintenance visual inspections

Florida - Annual nighttime sign inspections for retroreflectivity using headlights - complete form. "Hands-on" inspection of each sign every two years documented on inspection form per roadway section.

Georgia - Visual inspection two times a year (one time at night and one time at day).

Iowa - Field maintenance personnel are responsible for doing routine periodic day and night inspections. Visual evaluations are made.

Kansas - Semi-annual night inspections are made by maintenance crews to determine needed replacements. Daily daytime inspections are made by these same crews on their ongoing work.

Maryland - Yearly reflectivity studies done at night using vehicle headlights or high powered flashlights.

Minnesota - Of the eight MN/DOT districts, a few do annual nighttime visual inspections only.

Missouri - We have a yearly sign inspection with every other year being a night log.

Nevada - Nevada has a limited amount of spot checking using a retroreflectorometer.

New Jersey - The new sign inventory program will have a sign retroreflectivity and environmental concerns.

New York - Night time drive by once every two years.

North Carolina - Both daytime and nighttime visual inspections are conducted on an annual basis.

Ohio - The 2-3-4 second procedure described in Section D-2 of the FHWA Traffic Control Devices Handbook is followed.

Oregon - No special equipment is used. Both night and day inspections are done at least once a year.

South Carolina - Signs are inspected by maintenance personnel to determine effectiveness, but they do not routinely measure the reflectivity by mechanical means.

South Dakota - Visual inspection and use of a retroreflectorometer.

Tennessee - Maintenance personnel make constant inspections as to knock downs, signs in poor condition, etc.

Texas - All signs are checked visually twice a year. This inspection includes checking legibility and reflectivity at night. Additionally, all personnel who frequently travel the highways are instructed to report obscured or damaged signs.

Utah - Visual review semi-annual. Q-beam used for retroreflectivity checks.

Virginia - Inspects signs twice per annum, with one inspection at night.

3. Please estimate the percentage of highway signs on the state system that are refurbished and/or replaced by private contractors.

AK.....5%	LA.....10%	NY.....2%
AR.....1%	MA.....75%	OH.....39%
AZ.....10%	MD.....5%	OK.....5%
CA.....5%	ME.....1%	OR.....30%
CO.....0%	MI.....80%	RI - reconstruction projects
CT.....50-75%	MN.....10%	SC - 15% I System
DE.....2%	MO.....10%	SD.....5%
FL.....05%	MS.....0%	TN.....50%
GA.....1%	ND.....10%	UT.....2%
HI.....50%	NE.....<2%	VA.....25%
IA.....10%	NH.....5%	VT.....2%
IL.....5% or less	NJ.....3-5%	WA.....20%
KS.....50%	NM.....<5%	WV.....10%

North Carolina - 1% of maintenance is by contractor; 100% of the replacement through major roadway projects is by contractor. Of the \$14 million spent annually, 36% is by contractor.

4. Please break down the above percentage according to type of roadway.

State	Interstate	Primary	Secondary	Other
AK		5		
AR	0.5	0	0.5	0
AZ	-	2	-	-
CT	90	5	5	
DE	99	1	0	0
FL	0	0	0	0
GA	1	-	-	-
IA	98	2	-	-
IL	4	.5	.5	-
KS	100	50	-	-
LA	10	-	-	-
MD	4	.5	.5	-
ME	100	-	-	-
MI	36	34	30	-
MN	100	-	-	-
MO	10	-	-	-
NC	27	8	1	0
ND	9	1	-	-
NH	100	-	-	-
NJ	40	60	-	-
OH	30	7	2	-
OK	4	1	-	-
OR	10	65	20	5
SC	95	5	-	-
SD	5	-	-	-
UT	80	20	10	-
VA	20	5	-	-
VT	20	20	10	50 (urban)
WA	80	15	5	-
WV	90	10	-	-
WY	3	2	-	-

IV. GENERAL INFORMATION

Arizona - Our system is contributed to by both our operations and development personnel. This causes some confusion from time to time as to project priorities.

California - Inventory - state and interstate - 500,000 signs

Hawaii - When the computerized inventory program is completed, it will provide an improved sign management.

Illinois - All signs which become nonfunctional or obsolete are returned to the Central Sign Shop for reclamation and redeployment into the system. Sixty-five percent of the signs manufactured on an annual basis are manufactured on refurbished substrate at an annual savings of \$450,000

Kansas - Kansas will be developing an inventory system in the future for all systems of roads. This will assist the state in determining the need for signing materials and information for others within the highway agency that it will not have to make field checks now to obtain information.

Louisiana - State is divided into nine districts. Each district has its own sign crews. Each district determines their signing needs and orders them from the Central Sign Shop. Statewide sign crews maintain breakaway and truss mounted signs.

Michigan - The majority of sign replacement is performed under contract on a routine replacement cycle of 15 years (based on expected service life of reflectivity). Accident knockdowns and spot maintenance are performed by state forces.

Mississippi - All interstate and overhead signs are maintained centrally by the Traffic Control and Safety Division. Off interstate signs are maintained by the districts. They have a hard copy inventory of only the interstate system. The state is working toward a statewide computerized inventory.

Nevada - As mentioned in No. 1, the state has received approval to develop a computerized sign management program for the interstate system. It will be expanded to include the rest of the state system in the future. The RFP is finalized and will likely be sent out by January 1, 1992.

West Virginia - A limited survey was just completed of the actual reflective values of the existing signs. One thing that comes to light is that some of the older signs may have as good a reflectivity as the newer ones. Time alone is not a real good measure of when to replace.

American Traffic Safety Services Association

Located in Fredericksburg, Virginia, just a short distance south of the nation's capital, is the national headquarters of the American Traffic Safety Services Association (ATSSA). The core of the association is the traffic safety services industry which provides roadway traffic control through the use of signs, signals, and pavement markings for construction and maintenance work zones as well as for permanent roadway installations.

The industry specializes in providing traffic control devices on our streets and highways that direct, warn and guide the traveling public safely and efficiently along the travel way. One of the basic goals of the association is to improve and maintain high standards in roadway traffic control so the trend in highway safety can be more positive.

One ATSSA objective toward this goal is to educate those individuals who have a responsibility for roadway operation, construction, and maintenance, in the proper techniques of both permanent and temporary traffic control for streets and highways. This education, linked with an individual's on-the-job training and experience, will lead to more highly qualified traffic control supervisors and safer roadways.

**American Traffic Safety Services Association
5440 Jefferson Davis Highway
Fredericksburg, VA 22407
(703) 898-5400 FAX (703) 898-5510**

Testimony to the U.S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation
May 4, 1993

(Submitted by Roy Kime, Counsel, International Association of Chiefs of Police, on behalf of Maury Hannigan)
Good morning, Mr. Chairman and committee members. I am Maury Hannigan, General Chairman of the Division of State and Provincial Police, representing 49 of the United States and members from the Canadian provinces. We are part of the International Association of Chiefs of Police (IACP).

I appreciate the opportunity to address your distinguished committee. My testimony will focus on several highway safety programs in the Intermodal Surface Transportation Efficiency Act (ISTEA). I am here representing the interests and concerns of law enforcement agencies throughout the United States, as well as representing the State of California, where I am Commissioner of the Highway Patrol.

Overview

Law enforcement agencies throughout the nation are dedicated to public safety and service. At the state level, law enforcement appreciated the emphasis in ISTEA on transportation safety. Your Committee is to be complimented for directing limited national resources to important traffic safety programs. As at the national level, each of our states must also focus our limited resources to best improve traffic safety, given the problems in our individual states. Our local constituencies require that our funding, which is increasingly limited, be spent effectively and efficiently.

Incentives

Driving under the influence (DUI) remains the most common reason why citizens of this country die on our nation's highways. In the 30 minutes while our panel is testifying, another person will be added to the list of fatally-injured DUI victims. In ISTEA, you reauthorized an important mechanism - *incentives* - for encouraging states to work on this pervasive problem. We strongly support the use of incentives as a way of efficiently inducing improvements in traffic safety.

In ISTEA, states are given a fiscal incentive to implement lower blood alcohol thresholds, immediate license suspensions for drinking drivers, and other DUI-reduction activities. The fiscal incentives provide a powerful reason to implement DUI programs, but we are pleased that they do not force federal "solutions" on a state when the state's leaders decide to pursue a different set of solutions. We think your ISTEA DUI program is an excellent conceptual model of a cooperative federal/state relationship.

M. J. Hannigan, General Chairman

International Association of Chiefs of Police, Division of State and Provincial Police
515 North Washington Street, Alexandria, VA 22314-2357
(703) 836-6767

ISTEA legislation also includes a short, 2-year incentive program for mandatory seat belt and motorcycle helmet use. We strongly supported these laws in California as there is no question about their effectiveness in substantially improving traffic safety. Although the incentives for belts and helmets are not as sophisticated as the ISTEA DUI programs, they do provide a worthwhile inducement for states to pursue helmet and safety belt legislation.

Speed Sanctions

I hope my message is clear -- IACP, along with the State of California, supports a positive, flexible, incentive-based approach to improving traffic safety. Now I would like to turn to a program that could be improved by using incentives.

The International Association of Chiefs of Police has officially opposed the speed limit sanction process since 1980 when the membership passed the first of five formal resolutions opposing these sanctions. Then, as now, we were concerned about the potential for perverse consequences -- that good intentions are not enough to assure safety improvements.

Prior to ISTEA, the perverse potential of speed sanctions was obvious, and it was well-documented in a report that Congress commissioned from the National Research Council¹. Under that sanction process, states could lose highway funding when measured violation rates were high. Of course, with fewer highway funds, fewer highway projects could be completed. Many of these projects were safety-related and thus speed sanctions could compromise motorist safety directly and indirectly.

Under ISTEA, the U.S. Department of Transportation has been given considerable latitude to develop a new speed limit sanction process. As you may know, their proposed rulemaking has been circulated for comments.

IACP encouraged the Department to streamline this burdensome speed monitoring and sanction process, and we respectfully request your support in this endeavor. We also request your assistance in generally de-emphasizing speed limit sanctions because they are ineffective, often inequitable, and wasteful of tax revenue.

First of all, the long history of speed limit sanctions is a 14-year chronicle of creative statistics and antagonism between states and the federal government. Sanctions have been mandated since 1978, and in recent years, 3 out of 4 states would have been out of compliance except for what the National Research Council called an "arbitrary" statistical adjustment process. The new regulations also include a statistical adjustment factor that will continue to challenge the creativity of states. The antagonism is also likely to continue because of frustrations caused by wasted funding that could be better spent on highway safety projects.

Some of the frustration at the state level is a result of wasted state effort on the maintenance of numerous speed monitoring sites, frequent data collection, statistical manipulation, and the reporting of detailed numbers. All of this is being done exclusively for the purpose of monitoring compliance -- it contributes nothing to improved safety. If the federal effort is included, the wasted funds are even greater. These funds and personnel time could be better used in programs that have direct safety benefits. In an era of limited resources, this misallocation of resources is difficult to accept.

Rather than spend federal and state funds for unproductive administrative activities exclusively focused on 55 and 65 mph speed limits, we believe those funds should be redirected to public education on speed issues generally, especially programs targeted at motorists who travel at speeds unsafe for conditions.

I think there would be enthusiastic support for repealing the speed monitoring process and using those funds to convince people to drive more prudently in residential neighborhoods, business districts, and on other surface streets. The safety benefits are likely to be substantial because these kinds of roads have much higher death rates than Interstates and other freeways.

A moment ago I expressed concern about the new sanction process continuing to pressure states for creative speed statistics. In addition, the organizational mismatch also continues. Speed sanctions require that funds be transferred from construction projects involving the state departments of transportation to activities involving the state highway patrols. With increasingly limited state resources, this kind of a sanction process creates fiscal winners and losers by pitting state agencies against each other at a time when the greatest need is for cooperation. Even more importantly, it once again shifts the focus of state efforts away from highway safety.

In addition to this organizational conflict, the effectiveness of speed sanctions is an issue. No federal or state study has ever proposed that federal sanctions have been effective in improving safety. In fact, a 1988 report by the General Accounting Office² came to the opposite conclusion.

With the new sanction process, the intentions are good, but the effectiveness remains questionable. The proposed sanction would reduce construction funds in a state -- this means lost construction jobs and delays in safety improvement programs at a time when many states need an economic boost. In California's case, our Department of Transportation (DOT) estimates about \$2 million over the next five years in additional cost for just the required new speed monitoring sites. These funds will have to be diverted from other construction and safety projects. Then, if California is sanctioned, the loss of construction funds will be more than five times greater. The DOT estimates that the annual sanction could result in a loss of 200 jobs in California.

Under the ISTEA speed monitoring and sanction processes, the fiscal view is bleak -- the states are left with higher operating costs, potential sanctions of construction funding, and lost jobs. We believe individual states are in a better position to determine where funding will have the greatest payoff, and what is the appropriate balance of efforts to achieve each state's goals.

Conclusions

States are responsible to local constituencies for the expenditure of tax dollars and should be responsible for setting their own safety priorities. Speed sanctions have been tried for a long time, but they have not proven to be effective. We ask your assistance in shifting emphasis from sanctions to incentives, and putting more of those federal and state funds into activities that have real safety payoffs.

Members of the International Association of Chiefs of Police were encouraged by the ISTEA emphasis on traffic safety. We applaud your use of incentives in ISTEA DUI programs. We urge you to use this concept for the speed compliance and other safety programs. We at IACP, and from California, are willing to help in this endeavor.

Thank you for this opportunity to offer comments. I will be happy to respond to questions at this time.

¹"55: A Decade of Experience," Transportation Research Board Special Report 204, National Research Council, 1984.

²"HIGHWAY SAFETY: Monitoring Practices to Show Compliance With Speed Limits Should Be Reexamined," General Accounting Office, March 1988.



Mothers Against Drunk Driving

511 E. John Carpenter Fwy., Suite 700 • Irving, Texas 75062-8187 • Telephone (214) 744-MADD • FAX (214) 869-2206/2207
NATIONAL OFFICE

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MOTHERS AGAINST DRUNK DRIVING

BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

MAY 4, 1993

Mr. Chairman, thank you for the opportunity to appear today to express the views of Mothers Against Drunk Driving on the implementation of the Intermodal Surface Transportation Efficiency Act of 1991. I appear here today on behalf of the 3.2 million Americans who are members and supporters of MADD.

This committee has played a critical role in the fight against drunk driving during MADD's 12 years as a grassroots advocate for the victims of this senseless and violent crime. The fight in which we have been engaged for those 12 years has met with success. 1992 saw the lowest number of highway fatalities in 30 years. 46% of highway fatalities in 1992 were alcohol related, down from 57% in 1982.

No longer, Mr. Chairman, is it considered humorous or socially acceptable to drink and drive in this country. A fundamental change in public attitudes has taken place, but much remains to be done. In the words of Robert Frost, we at MADD "have promises to keep and miles to go before we sleep". MADD is dedicated to ridding our highways of drunk drivers and we still have a long way to go until that goal is accomplished. There is no acceptable irreducible minimum number of victims.

MADD had the pleasure of appearing before this subcommittee last fall of the subject of the implementation of the National Uniform Minimum Drinking Age Act of 1984. Enforcement of the "21" bill as we know it, is a major priority of MADD. Today, you have asked for testimony on the implementation of ISTEA, so I would like to confine my testimony primarily to that portion of ISTEA most directly aimed at combating drunk driving: the NHTSA Section 410 program.

In 1991, MADD and the Congress sought a way to consolidate and streamline existing federal incentive grant programs designed to encourage the states to engage in the war against drunk driving by adopting and implementing comprehensive drunk driving prevention programs. We examined those measures enacted or put into place since 1980 which had proven to be the most effective in getting drunk drivers off the road and reducing the number of alcohol related crashes, fatalities and injuries. From those deliberations came the Section 410 incentive grant program which, like the Section 408 program created in 1982, provides basic grants to states which meet certain basic criteria with supplemental grants available to states which adopt additional measures.

The basic criteria contained in the Section 410 program incorporate the major public policy goals of MADD. They include: adoption of administrative license revocation and .08 BAC as the definition of intoxication by each state; the use of sobriety checkpoints and the creation of self-sustaining anti-impaired driving programs; and the enforcement of 21 and mandatory sentences for repeat offenders. Supplemental criteria include restrictions on open containers, license plate confiscation of those who drive with a suspended license, mandatory BAC testing in the case of death or serious injury, per se level of .02 for persons under age 21 and the adoption of .08 BAC prior to expiration of the grace period included in the basic criteria.

Like the Section 408 program before it, MADD believes that the Section 410 program is a good program designed to produce a comprehensive attack against impaired driving.

As you might recall, Mr. Chairman, the other body, as I'm told it is referred to here, acted on ISTEA first in 1991. In the Senate's version of the Section 410 program, the authorization level for grants began at \$25 million in Fiscal Year 1992, went up to \$50 million for Fiscal Year 1993 and leveled off at \$75 million for Fiscal Years 1994-1997. The intent of this steady increase in authorization levels was to phase in this new program over several fiscal years and to provide increasing incentives to states to fight impaired driving.

The authorization levels contained in the Senate bill became even more critical with the adoption by the House of an apportionment procedure by which funds would be allocated to states. At a \$75 million funding level, the Section 410 program would, when funds are distributed on the basis of population and road mileage, produce a financial incentive equal to or greater than that provided by its predecessor statute, the Section 408 program. It was clear to MADD at that time, that the Congress intended to increase not reduce the amount of financial incentive provided to the states.

The principle problem with the 1991 bill was that the funding

level, which was one of the last issues resolved in the overall ISTEA legislation, was set at \$25 million per year for each year over the life of the bill. That meant that states which qualified for funding would receive only one-third the incentive provided in previous incentive grant programs and thus would have no real financial stake in passing additional legislation. In addition, if a state did not qualify for funding in a given fiscal year, the funding apportioned to that state would either be redistributed as a windfall to qualifying states or be simply lost to the program. In essence, this significantly weakened the incentive basis of the program.

It was for all of these reasons that MADD advocated last year that the Section 410 program be revised and that grants be made to qualifying states based on 30% of their Section 402 allocation for a basic grant and an additional 5% for each supplemental criteria with which a state complies. These and other changes to the Section 410 program were contained in the Fiscal Year 1993 DOT Appropriations Bill.

The changes made to the Section 410 program last year mean that states will be given a real incentive to pass tougher anti-impaired driving laws provided there are sufficient funds available to fund the awards. The changes also make the program cost more. In Fiscal Year 1993, some 17 states have qualified for the new Section 410 program at a cost of about \$22.8 million when all basic and supplemental grants are covered. Assuming some new states will qualify in Fiscal Year 1994, the costs of covering grants for which states qualify is likely to exceed the authorized amount of \$25 million. When the anticipated shortfall in funding is coupled with the changes in the awards procedure permitting NHTSA to release to qualifying states less than the full amount to which that state would otherwise be entitled because of insufficient funds, the incentive nature of the entire program is threatened.

MADD was very gratified to note that the Clinton Administration recommended that the Section 410 program be funded at the fully authorized level of \$25 million. We would suggest however, that the authorized level be increased to make room for new states which are likely to qualify for funding. When additional states qualify, it is good news for the fight against drunk driving and that good news is measured in lives that will be saved. We would suggest that the authorization level be set at \$50 million for Fiscal Year 1994 and \$75 million for Fiscal Years 1995-1997.

According to a Gallup Poll commissioned by MADD, impaired driving is the nation's number 1 highway safety problem in the minds of the traveling public. A recent crime victimization survey in one state revealed that the overwhelming majority of the citizens of that state surveyed feared they were more likely to be involved in a drunk driving crash than any other crime. In light of the importance afforded this problem by the American people, we think

our recommendation to increase the funding level for Section 410 is modest. In fact, we would recommend a much greater investment in fighting drunk driving. Based on estimates of the cost-effectiveness of this effort in reducing health care and other costs, we believe this investment is highly justified. It is estimated that the out-of-pocket expenses for individuals, employers, insurance companies and government resulting from a single fatality is approximately \$700,000 per fatality. Crashes on our nation's highways remain the largest single contributor to trauma, death and injury to the American public and programs aimed at prevention of these crashes should be a major consideration in light of the health care crisis facing this country. The costs-benefits to be derived from an increased financial investment in the funding level for Section 410 can greatly outweigh costs increase alone.

In addition to increasing the authorization level for the Section 410 program, consideration should also be given to increasing the Section 402 funding. Since the amount of the award to a qualifying state under Section 410 is fixed, based on a percentage of 402 funds, an increase in 402 funding would allow for an increase in the resources available to the states for investment directly in drunk driving programs. This would further enhance the entire 410 program.

Mr. Chairman, there have been some 1400 pieces of legislation passed at the state and federal level in the last 12 years to combat drunk driving. At both the federal and state levels, there is much quality legislation on the books. But, laws are only as good as their enforcement and it is in enforcement that many of our laws fall short. A state can have a model statute to restrict underage drinking, but if that same state cannot pay inspectors to enforce the statute the end result will bear little relationship to the intent of the legislation.

MADD believes that the Congress could bolster the fight against impaired driving several fold by dedicating a portion of a tax on alcoholic beverages to support state and local anti-impaired driving law enforcement. It is appropriate for those most responsible for the problem--the users of alcohol--to help provide the financial resources for its control.

Mr. Chairman, I appreciate the opportunity to appear today and share my views with you. I urge this committee to maintain its commitment to fight impaired driving. As the recent death of Nancy Thurmond, the 22 year old daughter of Senator Strom Thurmond, makes abundantly clear, drunk drivers do not discriminate in whom they kill. Any of us can become a victim of impaired driving without a moment's notice. We've come a long way; but the impaired driving problem has not been solved and the fight must continue.

Thank you, Mr. Chairman



ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Co-Chairs:

D. Richard McFerson
President & CEO
Nationwide Mutual
Insurance Co.

Andrew McGuire
Executive Director
Trauma Foundation

Executive Director:
Judith Lee Stone

**Consumer and Safety
Organizations:**
Stephen Brobeck
Consumer Federation
of America

Joan Claybrook
Public Citizen
Clearance Dittow
Center for Auto Safety

Donald Friedman
MCR Technology Inc.

Jay R. Halton
New York Public Interest
Research Group

Ralf Hotchkiss
Wheelchair Mobility Center
San Francisco State University
Janine Jagger, M. Ph., PhD
Virginia Head Injury Foundation
University of Virginia

Robert J. King
Mothers Against Drunk
Driving (MADD)

Robert F. Larkin, M.D., FACEP
American College of
Emergency Physicians

Stephen Teret
American Public Health
Association

Hubert Williams
Police Foundation

**Insurance and Agents
Organizations:**
August P. Alegi
GEICO

Patricia Borowski
National Association of
Professional Insurance Agents

Herman Brandau
State Farm Insurance Cos.

Elizabeth White Call
Independent Insurance Agents
of America

John Connors
Liberty Mutual
Insurance Co.

Dale S. Hammond
The Travelers

Sonja Larkin-Thorne
ITT Hartford Insurance Group
Rodger S. Lawson, PhD
Alliance of American Insurers

Gerold Maatman
Kemper National
Insurance Cos.

Robert Vagley
American Insurance Association

Marie T. van Luling
Aetna Life and Casualty

TESTIMONY OF

ANDREW MCGUIRE

CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY
and
EXECUTIVE DIRECTOR, THE TRAUMA FOUNDATION

COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

MAY 4, 1993

Thank you, Chairman Rahall. I am Andrew McGuire, Executive Director of the Trauma Foundation and co-chair of Advocates for Highway and Auto Safety.

Advocates is a coalition of consumer, safety and insurance organizations dedicated to promoting the passage of highway and auto safety laws and policies to reduce death and injury on America's highways, and economic losses due to motor vehicle crashes. I am accompanied by Marie van Luling of Aetna Life & Casualty, Vice President, Consumer Issues, representing the insurance members of Advocates' board, and Judie Stone, President of Advocates.

I thank you on behalf of Advocates for conducting this hearing and allowing us to testify on the implementation of safety programs in the Intermodal Surface Transportation Efficiency Act (ISTEA). I will summarize my remarks and ask that my entire statement be inserted in the record. ISTEA contains many vital safety initiatives, and Advocates commends this Committee for its leadership in giving safety a high priority in ISTEA. These initiatives are a vital step forward in assuring that safety takes its deserved place in the federal highway transportation programs. Safety is too often isolated from other highway programs, yet it should always be paramount and fully integrated into any highway program or project.

ISTEA brings this goal closer to reality.

The state of highway safety today contains both good news and bad news. The good news is that advances continue to be made — the nation's fatality rate is at a record low, the proportion of fatal crashes in which alcohol is a factor continues to decline, and more and more states are enacting tough anti-drunk driving, safety belt, and motorcycle helmet laws.

In fact, Mr. Chairman, as you know, your own state of West Virginia just enacted a safety belt use law. If the Governor of Vermont signs the safety belt law recently passed by that state's legislature, as anticipated, 45 states will have safety belt laws, and 23 will have both safety belt and all-rider motorcycle helmet use laws.



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Advocates played an active role in encouraging this legislation. We doubt that we would have seen these successes without provisions such as ISTEA's Section 153, which I will mention later.

The bad news is that so much more needs to be done. Even with a lower fatality rate, the number of people killed on our roads every year approaches 40,000. Motor vehicle crashes are the number one cause of death of Americans under the age of 35, constituting a major public health dilemma. The cost of these crashes totals more than \$137.5 billion, much of which is the cost of caring for crash victims, paid for by tax dollars. The National Highway Traffic Safety Administration (NHTSA) estimates that the cost of motor vehicle crashes in West Virginia in 1990 was \$868 million; in Wisconsin it was \$2.2 billion. The cost to Pennsylvania was \$5.7 billion and to California, the most populous state, motor vehicle crashes cost \$15.66 billion.

Imagine the pressures that would be removed from our health care systems, our emergency rooms, our ICUs, our rehabilitation centers and nursing homes, if we could substantially cut the number of these deaths and injuries. And we can.

Experience has shown us what works and what doesn't in attempting to prevent motor vehicle crashes and crash deaths and injuries. The safety initiatives in ISTEA were shaped in large part by this accumulated knowledge, thanks to the leadership of your Subcommittee and the Public Works Committee.

The Intermodal Surface Transportation Efficiency Act has been in effect a little over a year, and already we can see that ISTEA's safety programs are working. We have a number of suggestions for minor "mid-course" corrections, and even a few ideas to keep in mind for the next generation of highway safety initiatives. Although we are recommending a few improvements, ISTEA is clearly a safety success.

I. MOTORCYCLE HELMET AND SAFETY BELT USE LAWS

Let me first discuss Section 153, since this successful program has been criticized by others here today.

Section 153 was created to encourage the adoption of state safety belt and all-rider motorcycle helmet use laws, and it is working. At least five states -- West Virginia, as mentioned earlier, Maryland, Nebraska, North Dakota, and Rhode Island -- have enacted either a safety belt or an all-rider motorcycle helmet use law since ISTEA became law. In fact, you could say Section 153 was working even before it was law. In at least three states that adopted these laws in 1991, this anticipated federal initiative was raised in the legislative debate as one reason for action.

The reasons for Section 153 are clear: safety belts and motorcycle helmets save lives, prevent injuries, and save tax dollars. State laws are the most effective means to get people to use safety belts and motorcycle helmets. It is a national, non-partisan goal to see these proven life-saving laws in all 50 states. Section 153 works to encourage states to act.

As Chairman Mineta knows, our state of California saw a **37% reduction** in motorcycle fatalities after our all-rider helmet law took effect. Other states have experienced similar results, as the General Accounting Office (GAO) found when it reviewed every valid study it could locate on these laws and their effectiveness.

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These laws are supported by the public, as well. For example, a recent poll of 5,000 AAA members in Wisconsin found that almost 70% supported mandatory safety belt use, and 73% supported the reinstatement of the state's all-rider motorcycle helmet use law.

It has erroneously been stated that Section 153 takes away federal highway dollars from states, or "blackmails" states. That is not true: Section 153 takes money from one highway category and places it in another, equally if not more important highway category -- highway safety. This program gives states a choice. Either enact these two life-saving laws or spend a few more of your federal transportation dollars on safety programs to compensate for the lack of these laws.

Thus, the "states' rights" issue raised by opponents of Section 153 is not valid. These provisions were written in cooperation with state officials, states lose no funds under these provisions, and, in fact, these provisions have been endorsed by many state officials and organizations. Attached, for the record, is a list of more than 90 state agencies, state organizations, and national organizations that endorse Section 153 as it is written.

We believe all states have the capacity of vision and political will shown by the states which have already enacted both laws. Section 153 is a fair approach to encourage them to find that will.

While Advocates strongly opposes any weakening or repeal of Section 153, time has revealed several barriers to the full implementation of these provisions.

Minimum Allocation: The Section 153 incentive grant program was included in the minimum allocation formula. In so doing, the "incentive" of these grants was removed for all minimum allocation states. No Title II (safety education or enforcement) monies had ever been included in the minimum allocation program. At least one state has already declined to apply for Section 153 funds because of the minimum allocation problem, and we anticipate more states to do the same next year. We strongly urge that Section 153 be removed from the minimum allocation calculation so it will provide an incentive to all states and that this change be retroactive.

Full-Year Requirement: ISTEA requires that a state must have had both laws in effect for a full year before it is eligible for the second year's grant. Some states that recently enacted laws have found themselves eligible for the first year's grant, then have been required to wait a year before receiving a second grant. This hiatus lessens the effectiveness of the grant funds and disrupts state activities.

We urge that this language be modified. Part of this change should include specific direction to the agency that the grant program is in effect until all funds have been expended. Some confusion exists about Congress' intent as to the length of this program, although we believe Congress was quite clear: states can receive incentive grants for only three years, but the program is active until all funds have been expended.

II. Funding for Section 402

The Section 402 highway safety grant program also contains good news and bad news. The good news is that this program has played a key role in the advances in highway safety we have seen the past few years. Because of the great cost savings to taxpayers when deaths and injuries are prevented, this program and other highway safety programs have been extraordinarily cost-effective. Where other national ISTEA programs are calculated in the billions of dollars, Section 402 operates at a much smaller level. That's the bad news -- the main grant program to address our nation's

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number one cause of death and injury -- a \$137 billion problem -- is authorized at less than \$150 million per year, and funded at an even lower level.

We recognize that ISTEA authorizes Section 402 at a record high level, and we appreciate the Committee's support for this program. But as recent experience shows, annual struggles for adequate funding are not necessarily successful.

We suggest that the Committee consider a different approach when it next reauthorizes the surface transportation programs, including safety. As I mentioned earlier, safety is often viewed as a stepchild of highway programs; a program in competition with other programs. To further the integration of safety with other highway programs, and to illustrate the primacy given safety by Congress, we suggest that the next reauthorization tie the funding of safety programs to the funding of the "bricks and mortar" programs. As highway construction spending increases, so should spending for highway safety. We suggest that funding for the traffic safety grant programs be set at 3% of the authorization level for all surface transportation programs.

Last year, for example, out of the approximately \$15 billion authorized for all surface transportation programs, these safety programs were funded at approximately \$150 million. Under this proposal, the funding level would have been closer to \$450 million -- still not even half a billion for safety, and yet would realistically reflect the concern of transportation policy-makers.

III. Truck Safety

We applaud the Committee's support in ISTEA for halting the spread of longer and heavier trucks. Commercial vehicle safety is an issue which affects all highway users. When tractor-trailers crash, passenger vehicle occupants are the likely victims. In fatal crashes involving passenger cars and tractor-trailers in 1991, 98% of the people killed were occupants of the passenger vehicle.

However, we are concerned that the implementation of the freeze on longer combination vehicles (LCVs) will not live up to Congress' intent.

For example, the Federal Highway Administration (FHWA) is apparently accepting undocumented affidavits from both motor carriers and states on purported operations of LCVs. We were concerned, during consideration of ISTEA, that it would be difficult to truly "freeze" LCV operations if claims of existing operations could be accepted without solid proof. Under this approach, we will not see a true "LCV freeze," but "LCV creep."

We are also concerned that FHWA's definitions of a "temporary re-routing" and "divisible load" will allow abuses.

In addition, the Federal Highway Administration (FHWA) is behind schedule on implementing the freeze; ISTEA directed the agency to issue the final regulation by June 1992, but FHWA has not even closed the second NPRM docket for comments.

In this area, as in a variety of other commercial vehicle safety directives in ISTEA, the agency is not meeting the schedule mandated by Congress and is frequently also not meeting Congress' intent. We urge the Subcommittee to closely review the FHWA's implementation of statutory directives created in ISTEA.

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For example, FHWA's final rule to determine the compatibility of state and Federal commercial vehicle laws and regulations allows existing hours-of-service regulations in some states which far exceed Federal limits. The agency deemed appropriate California regulations which allow **112 hours a week** driving with only an eight hour rest period between 12 hour driving cycles.

We appreciate this Committee's communications to FHWA over the past several months warning the agency that it will not tolerate a general lowering of truck safety standards or a withdrawal of the Federal role from major areas of truck safety regulation and oversight. We urge you to continue your strong and diligent oversight and, when necessary, your guidance to the agency.

IV. Design Standards

A great concern of Advocates is ISTEA's treatment of another important aspect of highway safety -- roadway design standards.

One little-appreciated but effective factor of roadway safety is a driver's ability to rely on some consistency in the road environment through uniformity in highways of lanes, striping, signing, shoulders, etc. This uniformity is one reason for the low fatality rates on our Interstate system and such consistency becomes more important as the driver's age increases. Surprising drivers by not meeting their expectations creates hazardous situations and undermines safety.

Unfortunately, in keeping with the goal of providing maximum flexibility to the states, ISTEA also eliminated conformity with federally issued design standards for the Surface Transportation Program, which used to be required for federal approval and funding of any project. States are now allowed to design any federal-aid project with their own unique standards.

Advocates believes the public is better served by moving in the other direction -- increasing design uniformity and toughening design standards. Allowing 50 different standards for roadway design and traffic devices will further confound drivers and, ultimately, compromise safety.

Under ISTEA, FHWA would not be able to halt states from using design standards worse than those formerly required under Federal law. Advocates urges the Subcommittee to re-examine these provisions, believing that uniformity on our highways should be increased, not lessened, especially as our population and our highways are growing older.

V. Management Programs

When Advocates testified before this Subcommittee two years ago, we strongly supported the implementation of management programs, and even provided extensive detail of what such systems should include. We testified that: "Effective federal oversight of highway fund expenditures must be guaranteed to ensure the thorough integration of safety into highway projects."

We were delighted to see a variety of management systems included in ISTEA. Many of the specifics of how these systems would work were left to the discretion of the agency. We urge the Subcommittee to strengthen its direction to FHWA to assure that these management systems provide the federal oversight envisioned by Congress.

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The management systems proposed by the agency will not assure that federal dollars are spent more effectively and that safety will be integrated into early and thorough consideration in state highway efforts, as the management systems were intended to do.

For example, the proposed Highway Safety Management System contains vague, rhetorical language. It doesn't require that states conduct areawide safety reviews and evaluate project safety as a condition of Federal assistance. If the U.S. DOT can't be assured that basic safety reviews and evaluations have been conducted, how can it justify distributing Federal funds?

Clearly, if these management plans are to be realistic and not just rhetoric, FHWA needs to do more.

VI. Work Zone Safety

During the debate on ISTEA in 1991, Advocates also raised the issue of work zone safety. Each year, close to 800 people die in highway work zone accidents and the number is growing. Congress acted to address this issue by including a provision directing the U.S. DOT to develop and implement a work zone safety program and to improve data collection efforts on this issue.

The agency is directed by ISTEA to pursue rulemaking, but none has appeared to date. The work zone safety program report mandated by Congress, sent in late 1992, shows no changes in the agency's current approach. We urge the Subcommittee to direct FHWA to act on ISTEA's work zone safety provision, Section 1051.

VII. Speed Limit Enforcement

Before discussing the pending FHWA rulemaking on speed limit compliance, I am compelled to mention a recent policy resolution of the American Association of State Highway and Transportation Officials (AASHTO). On April 19 of this year, AASHTO decided to urge Congress to abolish the national maximum speed limit law. The resolution would permit states to set speed limits all highways without regard to a 55 or even 65 MPH limit. In fact, AASHTO states that "motorists tend to drive at a speed which they perceive to be reasonable and prudent." Based on that view, why set any speed limit at all?

The answer is that a large number of people drive at excessive speeds under all conditions and endanger both their own lives and the lives of other highway users. As you already know, the National Academy of Sciences concluded that many thousands of lives were saved when Congress adopted the 55 MPH speed limit. Furthermore, recent evidence and NHTSA studies prove that the increase to 65 MPH on rural Interstates has cost the lives of **several hundred citizens each year** since 1987. In light of these facts we were disappointed that AASHTO, an organization whose membership is comprised of states and state officials, would urge a repeal of the speed limit law that will result in the deaths of many more Americans. Unfortunately, this resolution reflects the widespread ignorance that exists about the risk of excessive speed.

Speeding is a serious health and safety issue that is not being given sufficient recognition; it is a factor in **at least one-third all highway fatalities**.

We commend the Committee for addressing the growing speed epidemic on our highways in ISTEA. ISTEA eliminated the provisions in the federal highway program that penalized safety-minded states that wished to remain at 55 MPH. ISTEA required the agency to give greater weight to more

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dangerous driving behavior. The proposed formula would take into account the fatality rate on different types of highways as well as the greater crash risk posed as the speed of vehicles increases above the legal speed limit.

However, the proposed FHWA speed limit compliance formula has several drawbacks that undermine Congress' intent. First, the FHWA proposed a 5 MPH speed tolerance, or cushion, above the legal speed limit. Speeding vehicles would not be considered in violation unless they are travelling at 61 MPH on highways posted at 55, or at 71 MPH on highways posted at 65. This speeding cushion encourages both more speeding and relaxed state enforcement and, therefore, should not be part of a speed limit enforcement regulation.

Second, the proposed formula continues the use of so-called adjustment factors. Adjustment factors purportedly compensate for variability in speedometers and speed monitoring equipment. In fact, they are statistical "fudge" factors that are used to artificially deflate the actual percentages of speeding vehicles. The use of adjustments is not supported by technical research and should be eliminated.

Third, and most important, the proposed formula will again place undue pressure on those states that have opted to remain at the 55 MPH speed limit. These few states would be placed in a separate category and allowed fewer violations of the speed limit law than states that permit vehicles to drive at 65 MPH. This aspect of the formula encourages states to allow 65 MPH in order to get a higher point threshold before being considered in violation. The speed limit playing field should be leveled by assigning one point total for all states.

VIII. Post-ISTEA

We hope that as the Subcommittee begins to think about future surface transportation programs, including safety programs, it takes visionary steps to further increase the safety of our roads.

As mentioned earlier, we suggest tying funding for safety to funding for all highway programs.

Another area we hope the Subcommittee considers is encouraging the states to fill the gaps in our occupant protection laws for children. In many states, dangerous loopholes exist in child safety seat and safety belt use laws, which result in preventable deaths, injury and health care costs. Attached are materials developed by the "Children at Risk" campaign, supported by Advocates, the National SAFE KIDS Campaign, and many other organizations. We hope that when the Subcommittee considers either mid-course adjustments to ISTEA, or the next generation of ISTEA, the goals in your subcommittee's jurisdiction are included.

Conclusion

In conclusion, we commend you, Mr. Chairman, and this Subcommittee for your leadership in enacting a visionary law in the Intermodal Surface Transportation Efficiency Act. We thank you for giving safety new prominence in this law and adopting creative approaches in safety programs to increase their opportunities for success.

Through your leadership, we believe ISTEA will help to further lower the fatality rates on our roads, and will prevent many unnecessary deaths and injuries.

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But if the full potential of ISTEA is to be met, your vigilance and involvement in the implementation of ISTEA is required. We hope you will consider our proposals to better integrate safety in the federal highway program.

We urge you not to chip away at the sections of ISTEA found to be effective; if changes are made to these provisions, tinkering with other areas that are considered controversial will be next.

Advocates looks forward to working with you, Mr. Chairman, Chairman Mineta, Representative Shuster and Representative Petri in supporting the vital safety programs in ISTEA and in future legislation. We also look forward to a continued productive working relationship with your capable and responsive Committee and Subcommittee staff.

Thank you for the opportunity to testify on these important issues. I would be happy to answer any questions you may have. Thank you very much.

"Children at Risk" Campaign

Occupant Protection Laws:
A Prescription for Children's Health and Safety

Wish List

1. Every state should take immediate steps to close the gaps in current occupant protection laws so that all children under the age of 16 are covered by either a child safety seat or safety belt law.
2. The law enforcement community should increase efforts (such as safety check points) to enforce existing child safety seat laws in all states.
3. States and the medical community should increase awareness programs on the benefits of correct child safety seat usage (i.e., including safety seat guidance in newborn-discharge instructions at hospitals and requiring parents to have a child safety seat in their car prior to departure).
4. The U.S. Department of Health and Human Services should initiate change in federal and state Medicaid rules so that low-income parents can be reimbursed for child safety seats.
5. Automakers should be commended for advancing child protection features such as built-in child safety seats, and should be encouraged to continue development and introduction of features which improve the fit and comfort of safety restraint systems for children and small adults.
6. Federal and state governments and private sector industries should work together to improve safety belt/safety seat compatibility, increase retrofitting of rear lap-only belts to three-point belt systems, and look for other opportunities to increase child passenger protection through improved design.
7. Congress should adopt pending legislation that would encourage states and localities to adopt bicycle helmet laws.
8. The Consumer Product Safety Commission should move forward immediately on a bicycle helmet safety standard.
9. The U.S. Department of Transportation should issue a child booster seat safety standard.
10. Corporations should consider developing or expanding programs to offer low-cost, free or loaner safety seats to employees, policyholders and/or the community, and should also consider expanding such programs to include bicycle helmets.

Sponsored by the National SAFE KIDS Campaign and Advocates for Highway and Auto Safety, the "Children at Risk" Campaign is a coalition of health, safety, children's advocacy, law enforcement and business organizations working together to improve child passenger safety by closing the gaps in state safety belt/safety seat laws and other public policy and private sector initiatives.

"Children at Risk" Campaign
c/o Advocates for Highway and Auto Safety
777 North Capitol Street NE, Suite 410 • Washington, DC 20002 • (202) 408-1711



Gaps in Child Restraint and Seat Belt Use Laws Affecting Children Under Age 16

Child-Related Gaps

- Coverage ends when child reaches specified age
- Laws do not apply to nonresident children

Driver-Related Gaps

- Laws do not apply to drivers who are unrelated to children
- Laws do not apply to out-of-state drivers
- Laws only apply to drivers in their own vehicles

Vehicle-Related Gaps

- Laws do not apply to rear seating positions
- Laws do not apply to children in pickups
- Laws do not apply to out-of-state vehicles

**ORGANIZATIONS SUPPORTING SECTION 153, FEDERAL PROVISIONS
ENCOURAGING SAFETY BELT & ALL-RIDER MOTORCYCLE HELMET USE LAWS**

Advocates for Highway and Auto Safety
 Aetna Life & Casualty
 Alabama Chapter of the American Academy of Pediatrics
 Alabama Department of Public Health
 Alliance of American Insurers
 American Academy of Family Physicians
 American Academy of Orthopaedic Surgeons
 American Academy of Pediatrics
 American Association of Critical Care Nurses
 American Association of Neurological Surgeons
 American Automobile Association
 American Automobile Manufacturers Association
 American Coalition for Traffic Safety
 American College of Emergency Physicians
 American College of Preventive Medicine
 American College of Surgeons
 American Family Insurance
 American Red Cross
 American Speech-Language-Hearing Association
 American Traffic Safety Services Association
 American Insurance Association
 American Nurses Association
 American Public Health Association
 American Trauma Society
 Arizona Department of Health, Office of Emergency Medical Services
 Association of Schools of Public Health
 California Center for Childhood Injury Prevention
 Center for Auto Safety
 Citizens for Reliable and Safe Highways (CRASH)
 Coalition for Consumer Health & Safety
 Colorado Academy of Emergency Physicians, Inc.
 Colorado Head Injury Foundation
 Colorado Motorcycle Helmet Coalition
 Congress of Neurological Surgeons
 Connecticut Traumatic Brain Injury Association
 Consumer Federation of America
 Consumers Union
 Emergency Nurses Association
 Emergency Nurses C.A.R.E.
 Epilepsy Foundation of America
 Federal Safety and Health Council, Southcentral (Alaska) Chapter
 GEICO Insurance Company
 General Federation of Women's Clubs
 General Motors Corporation
 Georgia Consumer Center
 Greater New York Safety Council
 ITT Hartford Insurance Group
 Kemper National Insurance Companies
 Liberty Mutual Insurance Company
 Massachusetts Advocates for Traffic Safety

Massachusetts Head Injury Foundation
 Minnesota Chapter, American Academy of Pediatrics
 Montana Chapter, American Academy of Pediatrics
 Mothers Against Drunk Driving (MADD)
 Motor Voters
 National Association of Governors' Highway Safety Representatives
 National Association of Orthopaedic Nurses
 National Association of Pediatric Nurse Associates & Practitioners
 National Association of Professional Insurance Agents
 National Association of State Emergency Medical Services Directors
 National Commission Against Drunk Driving
 National Head Injury Foundation
 National SAFE KIDS Campaign
 National Safety Council
 National Safety Council, Broward (FL) Chapter
 Nationwide Insurance
 New Mexico Statewide EMS Advisory Committee
 New York Chapter 3, American Academy of Pediatrics
 New York Consumer Assembly
 North Carolina Chapter of the American Academy of Pediatrics
 North Carolina Consumers Council
 North Carolina Pediatric Society
 Police Foundation
 Public Citizen
 Safety Council of the Louisiana Capitol Area
 San Diego-Imperial Chapter, American Academy of Pediatrics
 San Francisco Injury Center
 Southeast Region (Alaska) EMS Council
 Southwest Florida Safety Council
 State Farm Insurance Companies
 Trauma Foundation
 The Travelers
 USAA
 Virgin Islands Department of Health, Division of EMS
 Walla Walla County (Washington) Department of EMS
 Washington Department of Health, Office of EMS & Trauma Systems
 Washington State Disability Prevention Program
 Washington State EMS & Trauma Care Steering Committee
 Washington State Trauma Society
 Wausau Insurance
 Wisconsin Keep 21 Coalition
 Yukon (Alaska) Kuskokwim Health Corporation

5/3/93

4 May 1993

Dear Chairman and Members of the Subcommittee,

Thank you for inviting ABATE of California to present at this hearing. ABATE is very interested in the activities of federal and state legislatures on the topic of motorcycling. Last election, ABATE distributed over 250,000 voter guides.

I am presenting for ABATE at their invitation. I am also a member of several other motorcyclist organizations--AMA, MMA, HOG, HLDL, and BOLT--and as such represent the interests of their membership as well. I am also representing the interests of a number of non-associated riders and non-motorcyclists. This trip, as all my activities on these issues, is self-funded.

Bio/resume:

Name: Paul J. Rafter

Employer: Hewlett-Packard Company, 13 years

Position: Marketing Program Manager, Computer Systems Operation

Education: BSEE, MBA (in progress)

Other Qualifications:

- Motorcyclist for 24 years
- Columnist/reporter for Thunder Press, a California motorcyclist magazine (25,000 circulation, 4X growth rate)
- Teaching consultant for high school economics/business classes
- Leader for charity fund raising events

Reasons for supporting the removal of the penalty language in ISTEIA:

- A person's right to choose about what they can do with their bodies extends to all behavior that does not negatively affect other Citizens.
- Laws controlling personal behavior are ultimately detrimental to our country and not consistent with the principles laid down by our founding fathers in the Constitution of the United States.
- Motorcycling, while not for everyone, is better for our country than driving cars and should be supported and encouraged:
 - * Motorcycles reduce congestion on our highways and parking lots.
 - * Motorcycles use less of our natural resources
 - * Motorcyclists and motorcycle clubs hold events to raise donations for charities. (I do not know any car clubs that do this.) The donations typically come directly from the pockets of the motorcyclists.

Major points against mandatory helmet laws and the penalty language of ISTEIA 1991:

- A. The penalty language like that found in section 153 of Title 23 U.S. Code is viewed by us as unacceptable public policy: it puts a barrier between people and their legislature. Reasonable exceptions are being denied because of the federal mandate (see Attachment A).
 1. Avalon, the only city on Santa Catalina Island has a speed limit of 20mph. The primary transportation was mopeds and golf carts. The introduction of a mandatory helmet law has caused considerable disruption to the community, its Citizens and its visitors. An exception bill for Santa Catalina Island that reached Governor Wilson's desk was vetoed. Wilson, who as a U.S. Senator helped to write the penalty language that found its way into ISTEIA, cited the potential loss of funds as one reason for the veto.
 2. An exception bill for "meter maids" is now struggling in the

legislature. One of the issues blocking this bill is the potential loss of highway funds. Meter maids drive three wheel vehicles and have been complaining of the loss of hearing, the excessive weight, and the excessive heat of helmets that they are required to wear under the mandatory helmet law.

3. A Citizen-mandated helmet law roll-back bill was blocked in the Assembly Transportation Committee. Among the leading reasons was the potential loss of highway funds.
 4. In a related situation, the people of California and their legislature passed a resolution regarding an exception to drivers license suspensions, a resolution allowed according to ISTEIA if the governor approves. Our governor refused to support this Citizen mandate.
- B. The introduction of a helmet law in California has created major disruption in the lives of Citizens (See Attachment B).
1. There is no list from DOT of approved helmets. There is a lot of confusion as to which helmets Citizens should buy. Citizens buying and wearing helmets represented as legal are being cited later because the police have decided that that particular helmet does not meet the federal specification.
 2. The California Highway Patrol, and local agencies responding to the CHP recommendations on which helmets are "legal", are using the law to harass a certain class of Citizens who are trying to comply to a vague law.
 - a. Citizens on motorcycles are subjected to questionable searches, confiscations, and citations while Citizens in cars that may be violating similar laws are not.
 - b. The California helmet law specifically states that the manufacturer is eligible for citation when a helmet that they represent as meeting DOT standards (FMVSS 218) does indeed not meet said standard.
 - c. In (b.) above, the riders and passengers are being cited when it is the manufacturer who is possibly in violation.
 - d. Citizens who were attempting to comply with the law now need to take time off from work to argue their innocence in traffic court.
- C. Since the helmet law became effective in January 1992, it has created a negative financial impact on the state. (See Attachment C).
1. Creation of the law will cost the state an estimated \$30M in lost revenue from fees, taxes, etc.
 2. Creation of the law has hurt an industry segment thus reducing state revenues and possibly increasing unemployment burden.
 3. Enforcement of the law has netted a loss for the state of about \$20,000.
 4. Litigation cost to the state since the law is about \$500,000 so far with expected cost in excess of 3 times that number.
- D. We do not believe the public burden theory (see Attachment D).
1. When all accident injuries are considered, motorcycle operator and passenger injuries are trivial.
 2. There are more head injuries to occupants of automobiles than to motorcyclists.
 3. Helmet law advocates promise reduced tax burden and insurance rates yet there is no accountability in the laws--taxes and premiums are not reduced accordingly within a proposal for a helmet law.
 4. Drivers of automobiles cause the majority of motorcycle accidents yet the victim, not the perpetrator, is held accountable.

E. We believe that the wearing of a motorcycle helmet is not always in the best interests of the motorcyclist and therefore, the motorcyclist should maintain the right to choose. Although there is laboratory evidence, case studies and testimony that support the positive aspects of helmet use, there is also a significant amount of laboratory evidence, court cases, and testimony in support of the negative aspects of helmet use. (see Attachment E).

1. I offer my personal testimony that helmets reduce my vision and hearing and aggravate fatigue. It is this personal experience that, after 14 years of always wearing a helmet, I began to choose to not wear one under certain circumstances.
2. Two friends of mine were rear-ended by a drunk driver. Eye witnesses testify that the CHP officer, the paramedics, and the emergency room doctor said that the added weight of a helmet would have killed or crippled them. They have fully recovered from their minor injuries.
3. I have access to over 1,000 court cases where the helmet has been found to have killed or injured the user. Since about 99% of liability cases are settled out of court, there are possibly 99,000 other similar cases for which we do not have records.
4. I have access to engineering test reports that show how helmets break necks. A recent article in the January 18, 1993 People Magazine explains how Larry McAfee, who in a 10 mph accident, suffered a broken neck in a manner previously described by these tests.

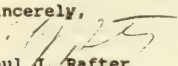
F. Nowhere in the Constitution of the United States does it say that the government--Federal or State--has the right to impose a public dress code for a group of Citizens.

Summary: Speaking for the large majority of motorcyclists and a large number of non-motorcyclists in California...

- ** We the People resent the Federal government telling its Citizens how to spend money that belongs to its Citizens the first place.
- ** We the People resent the Federal government telling its Citizens what clothes must be worn in public by a certain class of Citizen.
- ** We the People resent any government telling its Citizens that they have to wear a safety device that some users believe increases the chance of having an accident.
- ** We the People are taxpaying voters and We the People do not want the Federal government penalizing any state for these reasons.

I respectfully request that you honor the Constitution of the United States and your oath of office to uphold it by helping to remove the penalty language in ISTEPA.

Sincerely,


 Paul J. Rafter
 2537 Hawkington Ct.
 Santa Clara, CA 95051

ATTACHMENT A

SACRAMENTO OFFICE
STATE CAPITOL
P.O. BOX 943848
SACRAMENTO, CA 95834-0881
(916) 445-3134
FAX: (916) 322-0665

CARSON DISTRICT OFFICE
1 CIVIC PLAZA DRIVE, SUITE 320
CARSON, CA 90745
(916) 518-3384
FAX: (916) 518-3588

LONG BEACH OFFICE
245 WEST BROADWAY, SUITE 200
LONG BEACH, CA 90802
(310) 580-0008

April 28, 1993

Assembly California Legislature

JUANITA M. McDONALD

ASSEMBLYWOMAN, FIFTY-FIFTH DISTRICT

COMMITTEES

VICE CHAIRPERSON,
GOVERNMENTAL ORGANIZATION
EDUCATION
HOUSING AND COMMUNITY
DEVELOPMENT
TRANSPORTATION

CHAIRPERSON, EDUCATION
SUBCOMMITTEE ON URBAN
EDUCATION QUALITY

Honorable Nick J. Rahall
Chairman, Subcommittee for Surface Transportation
B 376 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Rahall:

I am writing to express my concerns about those provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) that have the effect of compromising the ability of state legislators to deal with public policy issues where there is considerable debate among constituents about the efficacy of positions taken by the federal government. In the five months since I took office, discussion on the policy merits of bills that I have introduced before the California State Assembly have been unduly influenced by the threat of funding losses due to ISTEA and do not take into consideration local conditions or circumstances.

As a consequence, full exploration of issues raised by proponents and opponents of pending legislation cannot be conducted on a strictly policy level because of the possibility of federal penalties or rewards. Especially in the State of California, where the effects of the most severe recession since the Great Depression has legislators and government officials scrambling for every available source of revenue, the threat of reallocation of federal transportation funds tends to outweigh arguments associated with the cost of enforcement (direct and indirect), civil liberties, individual rights or the impact on employment.

I would like to encourage you to consider the impact of federal mandates, penalties and rewards on the allocation of federal transportation funds.

Respectfully yours,


JUANITA M. McDONALD

C: Paul Rafter, ARATE of California



GOVERNOR PETE WILSON

September 30, 1992

RECEIVED

OCT - 1 1992

CAPITOL OFFICE

To the Members of the California Senate:

I am returning Senate Bill No. 1286 without my signature.

This bill would authorize the City of Avalon to be self-regulating on the matter of the State's mandatory safety helmet law. Proponents of the bill argue that the City of Avalon is unique in that it has no traffic lights, narrow streets, no freeways, and no speed limits over 20 miles an hour. They argue that its uniqueness is grounds for an exemption to the recently enacted safety helmet law.

In the brief time since the safety helmet law went into effect, compliance with the law is nearing the 98 percent level. Simultaneously, the number of injuries and deaths from motorcycle accidents has dropped dramatically. Exempting the City of Avalon from the requirements of the helmet law would set a precedent for other local agencies to seek similar exemptions due to "unique" circumstances.

Furthermore, enactment of this bill could result in significant federal penalties against highway construction funds.

Cordially,

PETE WILSON

SENATE THIRD READING

SB 1286 (Beverly) - As Amended: March 26, 1992

SENATE VOTE: 27-3ASSEMBLY ACTIONS:COMMITTEE TRANS.

VOTE 9-3

COMMITTEE W. & M.

VOTE 15-2

DIGESTExisting law:

- 1) Requires the driver and passenger of any motorcycle, motor-driven cycle, or motorized bicycle to wear a helmet meeting federal standards. Violation of this provision is an infraction.
- 2) Authorizes the city of Avalon on the island of Catalina to establish, by ordinance, standards which do not comply with state law in the following areas:
 - a) Limiting vehicle size and number.
 - b) Prohibiting designated classes of vehicles on the streets.
 - c) Establishing unique vehicle noise limits and speed limits.

This bill:

- 1) Authorizes the City of Avalon to exempt from the helmet requirement drivers and passengers over 15 1/2 years of age of motorcycles, motor-driven cycles, or motorized bicycles, displacing under 125 cubic centimeters.
- 2) Sunsets this provision on January 1, 1998.

FISCAL EFFECT

Unknown.

COMMENTS

- 1) This measure is sponsored by the City of Avalon. They note that mopeds, scooters, motorcycles, and golf carts are the major mode of transportation in Avalon. City officials believe they should be given the opportunity to exempt themselves from the mandatory helmet law. They point out that Avalon is geographically unique: encompassing about one square mile, having no stop lights, and with a maximum speed limit of 20 mph. The sponsors report that the city has not had a

- continued -

motorcycle accident resulting in a serious head injury involving a helmetless rider. The bill would apply only to the city, and not the rest of Catalina, which is private property.

- 2) AB 7 (Floyd - Chapter 32, Statutes of 1991) enacted the motorcycle helmet requirement, after years of discussion and debate, effective January 1, 1992. UCLA and the University of California at San Francisco are engaging in long-term studies of the health and fiscal impacts of this requirement. Early reports indicate that more than 98% of the motorcycle riders in the state are complying with the law. According to the California Highway Patrol, statistics for 1990 show that only 94 of those killed in motorcycle accidents (16 percent) were wearing a helmet. Only 4,538 of those injured in motorcycle accidents (24 percent) were wearing a helmet.
- 3) Opponents argue that it is too early to provide an exemption to the helmet law, and that no change should be made in the law absent "evidence ... presented which illustrates such public policy is no longer needed for the public good." Opponents express concern that, given the state's dire fiscal conditions, it may be inappropriate to allow the risk of generating additional cost for caring for persons who develop injuries due to this exemption. The Department of Motor Vehicles points out that drivers on Catalina "are no less vulnerable to head injury" Finally, opponents are concerned about the precedent this bill might set for others seeking exemptions from the helmet law. For instance, parking officers have expressed a wish to be exempted from the law, indicating that the helmets are uncomfortable to them.
- 4) Related Legislation:
 - AB 3607 (Ferguson) would have exempted motorcycle drivers and passengers from the helmet law if they carried specified health insurance. Failed passage in Assembly Transportation.
 - SB 1858 (Rogers) would exempt motorcycle helmet violations from penalty assessment provisions.

FH 027742

- continued -

AMENDED IN SENATE MARCH 28, 1992

SENATE BILL

No. 1286

Introduced by Senator Beverly
(Coauthor: Assembly Member Mays)

January 14, 1992

An act to amend, repeal, and add Section 21100.5 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1286, as amended, Beverly. Vehicles: safety helmet exemptions.

Under existing law, it is unlawful to operate a motorcycle, motor-driven cycle, or motorized bicycle if the driver or any passenger is not wearing a safety helmet, as specified, and it is unlawful to ride as a passenger thereon if the driver or any passenger is not wearing a safety helmet as required.

Under other provisions of existing law, local authorities of any city which is on a natural island with a specified area and population may adopt ordinances or resolutions on specified subjects which are different, in terms of restrictions or limitations, from those generally prescribed by the Vehicle Code.

This bill would also authorize, *until January 1, 1998*, those local authorities to adopt an ordinance or resolution exempting a driver ~~or~~ *and any* passenger riding on a motorcycle, motor-driven cycle, or motorized bicycle from the provisions of existing law requiring the wearing of a safety helmet when operating or riding on those vehicles *if the driver and any passenger are age 15 years and 6 months or over and the motor displacement of the vehicle is 125 cubic centimeters or less*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

SB 1286

— 2 —

The people of the State of California do enact as follows:

1 SECTION 1. Section 21100.5 of the Vehicle Code is
2 amended to read:

3 21100.5. Notwithstanding any other provisions of law,
4 ~~local authorities~~ *the local authority* of any city which is on
5 a natural island with an area in excess of 20,000 acres and
6 which is within a county having a population in excess of
7 4,000,000, may, if they determine ~~such local~~ rules and
8 regulations to be necessary in view of the special problem
9 existing thereon with respect to the size and nature of the
10 streets of the city and with respect to the characteristics
11 and nature of the city itself, adopt rules and regulations
12 by ordinance or resolution on the following matters:

13 (a) Regulating the size of vehicles used on streets
14 under ~~their~~ *the city's* jurisdiction.

15 (b) Regulating the number of vehicles permitted on
16 streets under ~~their~~ *the city's* jurisdiction.

17 (c) Prohibiting the operation, on streets under ~~their~~
18 *The city's* jurisdiction, of designated classes of vehicles.

19 (d) Establishing noise limits, which are different from
20 those prescribed by this code, for vehicles operated on
21 streets under ~~their~~ *the city's* jurisdiction and prohibiting
22 the operation of vehicles which exceed ~~such those~~ limits.

23 (e) Establishing a maximum speed limit lower than
24 that which the local authority is otherwise permitted by
25 this code to establish.

26 (f) Exempting a driver and passenger riding on a
27 motorcycle, motor-driven cycle, or motorized bicycle
28 from the safety helmet requirements of Section 27803 if
29 *both of the following apply:*

30 (1) *The driver and any passenger are age 15 years and*
31 *six months or over.*

32 (2) *The motor displacement of the motorcycle,*
33 *motor-driven cycle, or motorized bicycle is 125 cubic*
34 *centimeters or less.*

35 This section ~~shall~~ *does* not apply to vehicles of public
36 utilities which are under the jurisdiction of the Public
37 Utilities Commission while engaged in maintenance and
38 construction type service work.

1 *This section shall remain in effect only until January 1,*
2 *1998, and as of that date is repealed, unless a later enacted*
3 *statute, which is enacted before January 1, 1998, deletes*
4 *or extends that date.*

5 SEC. 2. Section 21100.5 is added to the Vehicle Code,
6 to read:

7 21100.5. Notwithstanding any other provisions of law,
8 the local authority of any city which is on a natural island
9 with an area in excess of 20,000 acres and which is within
10 a county having a population in excess of 4,000,000, may,
11 if they determine local rules and regulations to be
12 necessary in view of the special problem existing thereon
13 with respect to the size and nature of the streets of the
14 city and with respect to the characteristics and nature of
15 the city itself, adopt rules and regulations by ordinance or
16 resolution on the following matters:

17 (a) Regulating the size of vehicles used on streets
18 under the city's jurisdiction.

19 (b) Regulating the number of vehicles permitted on
20 streets under the city's jurisdiction.

21 (c) Prohibiting the operation, on streets under the
22 city's jurisdiction, of designated classes of vehicles.

23 (d) Establishing noise limits, which are different from
24 those prescribed by this code, for vehicles operated on
25 streets under the city's jurisdiction and prohibiting the
26 operation of vehicles which exceed those limits.

27 (e) Establishing a maximum speed limit lower than
28 that which the local authority is otherwise permitted by
29 this code to establish.

30 This section does not apply to vehicles of public utilities
31 which are under the jurisdiction of the Public Utilities
32 Commission while engaged in maintenance and
33 construction-type service work.

34 This section does become operative on January 1, 1998.

REF ID: A66666

City of Avalon
SANTA CATALINA ISLAND
 P.O. BOX 707, AVALON, CAL. 90704
 (310) 510-0220 FAX (310) 510-0901
 June 11, 1992



MAYOR - Hugh T. "Bud" Smith
 MAYOR PRO TEM - Hal Host
 COUNCILMEMBER - Barbara J. Gault
 COUNCILMEMBER - Ralph J. Morrow, Jr.
 COUNCILMEMBER - Norman E. Stow
 CITY MANAGER - Chuck Prince
 CITY CLERK - Shirley Dany
 CITY TREASURER - Harry W. Stritz, Jr.

The Honorable Richard Katz
 Assembly Transportation Committee
 Room 3148, State Capitol
 Sacramento, California 95814

Subject: SB 1286 (Beverly)

Dear Assemblyman Katz:

On June 22, 1992, your committee will hear SB 1286. Senate Bill 1286 simply continues in the spirit established by Section 21100.5 of the Vehicle Code. This section was added because the legislature recognized Avalon possessed genuinely unique traffic and motor vehicle circumstances. We encourage your support and yes vote on SB 1286 because it allows us to continue to regulate vehicle use and conditions.

Section 21100.5 allowed us to act responsibly in solving our traffic problems. We've restricted the number of motor vehicles, outlawed large vehicles and encouraged alternate, often non-polluting, transportation alternatives. The new motorcycle helmet law runs contrary to these actions. Prior to the helmet law motorscooters and motorized bicycles were the most common vehicles used for errands around town. Since enactment of the helmet law, they've essentially disappeared from the city streets and are increasingly replaced with full size cars. Until the helmet law, we had effectively solved our vehicle, traffic and parking problems. This is no longer the case. If the intent of AB 7 was to increase the public's safety, it has had the exact opposite effect in Avalon. It moved people out of small, slow vehicles, increased the number of full size vehicles on the road and altered our traffic mix.

Avalon is only one square mile. The maximum speed limit is 20 miles per hour. But because of the narrow streets and frequent four-way intersections, traffic moves much slower. There are no traffic lights nor are there any freeways. As noted above, motorscooters and motorized bicycles serve as utility vehicles here. They are not available to rent anywhere in town. All motorcycles are banned from the interior of the island.

Avalon's typical traffic mix consists of golf carts, bicycles, motorscooters and smaller automobiles and trucks. This coupled with the slow speeds, eliminates most traffic hazards. In the history of the City, Avalon has had one traffic fatality. And, the fatality resulted from a pick-up truck golf cart accident. It did not involve motorcycles.

* THE BILL THAT BECAME THE CURRENT HELMET LAW

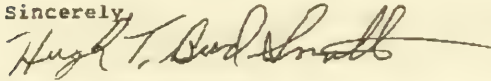
Assemblyman Richard Katz
Chairman, Assembly Transportation Committee
June 11, 1992
Page 2.

We are not asking to be exempt from motorcycle helmet use. We are asking that we be allowed to locally regulate helmet use. We would require helmet use on motorcycles with engines displacements greater than 125 ccs. We also would require helmet use by those under fifteen years, six months of age.

Opponents to SB 1286 say that any special consideration for Avalon sets a dangerous precedent. This is wrong. There is no other community in California like Avalon. SB 1286 is only applicable here.

An opponent of SB 1286 has referred to our home as "a precious little island". Well, we believe that is true, it is precious and worth preserving. We have taken bold steps to solve our traffic and parking problems. The new helmet bill undoes these efforts. Our request is simple, pass SB 1286. It continues in the spirit of previous legislative actions, allowing for local control of Avalon traffic and vehicles.

Sincerely,



Hugh T. "Bud" Smith
Mayor

cc: Avalon City Council
Assembly Transportation Committee
Senator Bob Beverly
Assemblyman Tom Mays
Assemblyman Gerald Felando
Kate Reilly, staff, Assembly Transportation Committee

February 26, 1992

The Honorable Quentin Kopp
Chairman
Senate Transportation Committee
State Capitol, Room 2057
Sacramento, California 95814

Subject: SB 1286 (Beverly)

Dear Senator Kopp:

I do hope that you can give this letter some consideration as I am not only asking for something for myself, but something for everyone in our little town of Avalon. If you haven't been to Catalina Island, you can't put yourself our place. Most of us came here to escape the demise of the big city (I came here 46 years ago). We felt that if we couldn't retain "the good life" here in this little town, 26 miles from the madness of the so called civilized mainland, then there was no hope for the rest of the world. We worked hard to retain this, and things worked well

We worked hard to retain this small town atmosphere, and things worked well until the early '70s when the "status symbol", the automobile, raised it ugly head, and we were inundated with autos.

We worked with the State of California and our citizens. It took about three years to get it figured out and put together. The State, realizing Avalon's unique circumstance, allowed us to regulate the number and size of vehicles in Avalon. We have approximately 800 cars in Avalon, plus emergency equipment.

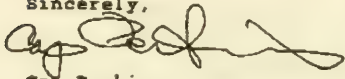
Although we are still very crowded, we do have a handle on it and it works. That is it did work up until January, 1992. The California Helmet Law has wrought havoc on this little community.

We probably have close to four hundred scooters, mopeds, and motorcycles here. Nearly all of these have been parked, and people are driving larger vehicles. There are no parking spaces except in the special moped, scooter parking areas (they are nearly empty) and it's wintertime now. I'm sure you can imagine what it will be like in the summer months.

Please let us control our own destiny and support SB 1286. I would like to invite you to see what we've done here in Avalon. There's nothing like it this side of the Garden of Eden. I would enjoy showing you around.

We in Avalon are sorely in need of some good news from our legislators. Please don't make us feel this is a hopeless quest. Our future is in your hands.

Sincerely,



Cap Perkins
P. O. Box 101
Avalon, CA 90704

cc: Transportation Committee Members

CP:jc

FEBRUARY 14,
1992

I'M WRITING TO URGE YOUR
SUPPORT FOR SB 1286 (AVALON MOTORCYCLE
HELMET BILL). I LIVE IN AVALON AND I'M QUITE
AWARE OF THE CONDITIONS OF A SMALL TOWN.
I ALSO RIDE A SCOOTER.

AVALON IS, AND HAS ALWAYS BEEN UNIQUE.
THE TOWN IS ONLY ONE SQUARE MILE, AND LIMITS
THE AMOUNT OF CARS TO SOMEWHERE AROUND 800.
THERE ARE NO TRAFFIC LIGHTS AND A SPEED
LIMIT OF 2 MPH.

THE CITY OF AVALON HAS ALWAYS TAKEN
STEPS TO RECOGNIZE THE PROBLEMS OF A
SMALL TOWN WITH A LIMITED AMOUNT OF STREETS,
ALL SHORT IN LENGTH, HARDLY ANY PLACE TO
SPEED.

I THINK THE CITY SHOULD BE GRANTED
THE RIGHT TO REGULATE ITS OWN TRAFFIC RULES
IN THIS UNIQUE COMMUNITY. IT IS DIFFERENT
IN AVALON. THANKS SINCERELY

Quay Pullen
48 CABRILLO
AVALON CA 90704

February 24, 1992

Members of the State Transportation Committee
re; Senate Bill 1286

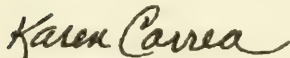
Dear Sirs,

Thank you for allowing the members of this tiny, unique, community the opportunity to have our voices heard on the issue of SB 1286 and it's impact on us.

Avalon is not like any other city in California. We have a maximum speed limit of 20 miles per hour. We have no stoplights. We only have a few streets on which vehicles are permitted and we are very well policed by L.A. County Sheriff's Deputies in vehicles and on foot. The Sheriff's themselves use a golf cart to do some of their work as it is an excellent alternative form of transportation for most of us. Mopeds and motor scooters have also become an excellent alternative form of transportation and have solved the problem of no transportation for those of us who have not lived on the island long enough to acquire the required city sticker to have a vehicle here. Most of us have found that by using a scooter, we don't need a vehicle here. SB 1286 discourages islanders from using scooters. The absences of scooters and mopeds on the streets is very noticeable to me and I'm sure others have noticed that people simply aren't using them. It isn't convenient to carry your helmet with you wherever you go and people don't feel comfortable leaving the helmet hanging on the handlebars all day so the scooters are sitting at home.

In a community where the ambulance has only been called out 1100 times in two years and only 4 of those calls involved a scooter or motorcycle I do not feel the same law is appropriate for our community as for California in general. I would ask that you expand our authority so that Avalon can develop a local law more suited to our traffic conditions. It was this same authority that allowed us to use golf carts on our city streets, something you don't see anywhere else in California.

Thank you for your consideration in giving our community the opportunity to develop a law that will work for us.



Karen Correa
Operation Manager
Seaport Village Inn, Avalon, California

Senator Bob Beverly
29th District California
California State Senate
California State Capitol
Room 5082
Sacramento, Ca. 95814

22 February 1992

Honorable Senator Bob Beverly:

My husband and I own a vacation home in Avalon, which we have owned since 1967. It is our "retirement" home. We live there as our secondary residence and spend approximately two weeks out of every month, and more in the summertime.

We would like to offer our support for SB 1286. This bill is being offered as an alternative to safe driving in Avalon, and in no way is meant to circumvent the original Helmet Law. The citizens of Avalon are not asking for any special treatment out of frivolity, but rather as a common sense measure and an appeal to make this safety law not result in undue hardships on the citizens of the city.

The fact that there are no freeways in Avalon, and that the speed limit is 20 MPH, plus the fact that there are no stop lights results in an extremely unique traffic situation. My husband and I do not own either a car or a golf cart and rely on mopeds to go back and forth to do our marketing. We would appreciate the Senate allowing the City to impose its own traffic laws directly pertinent to the situation.

Respectfully submitted by:

Marlene and Gaylin Schultz
4819 Matley Road
La Canada, Ca. 91011

Avalon Address:
P.O. BOX 2176
303 Eucalyptus Ave

✓cc: Avalon Mayor

helmet

February 19, 1992

Senator Quentin Kopp
Chairman
Senate Transportation Committee
State Capitol, Room 2057
Sacramento, CA. 95814

Re: SB 1286 (Beverly)

Dear Senator Kopp:

I understand that the Senate Transportation Committee will be hearing SB 1286 (Beverly) on March 17, 1992. I urge you to vote favorably on SB 1286 and ask that you encourage your colleagues in the Senate to do likewise.

The City of Avalon is presently the only city in California authorized by the legislature to regulate the size, number, and noise level of vehicles operating on City streets. The legislature wisely granted this unique authority to the City of Avalon because it recognizes that the city is, indeed, unique from virtually every other city in California. The passage of SB 1286 will simply expand that existing authority and enable the City of Avalon to develop local laws appropriate for our traffic conditions and streets. Despite many comments to the contrary, SB 1286 will NOT exempt the residents of Avalon from motorcycle helmet requirements.

The one square mile which comprises the City of Avalon is the ONLY area on Catalina Island in which motorcycles may be driven. The remainder of Catalina Island is owned by two private firms, neither of which will permit the use of motorcycles on their property. The maximum speed limit in the City of Avalon is 20 miles per hour. There is not one traffic signal in the City, or on the Island for that matter, and we have no freeways. The use of mopeds, scooters, and motorcycles is restricted to residents. There are NO rentals available anywhere on Catalina Island. Only 4 out of 1100 ambulance calls in the previous two years in the City of Avalon involved head injuries caused by motorcycle accidents, and each of these was minor.

Vehicle regulation is already extremely strict in the City of Avalon. Because of our unique location and geographical limitations, we have taken quite drastic steps to solve our traffic problems (too many vehicles and not enough room to park) via the authority granted by the legislature. All vehicles (cars, motorcycles, and golf carts) require a City permit, and there is approximately a five year wait to obtain a permit for a full size vehicle. Consequently, alternate forms of transportation, primarily mopeds and motor scooters, have been strongly encouraged. The new helmet law discourages the use of these alternatives.

The residents of Avalon have been referred to by Assemblyman Floyd, sponsor of the original helmet legislation, as being "elitists". Nothing could be farther from the truth. Tourism is Catalina Island's ONLY industry, and the Island's entire labor force works in tourism related businesses, usually at entry level jobs and low pay rates. Many employees hold down 2 and 3 jobs during the summer season in order to be able to pay their rent during the off-season. That portion of our population that is retired is very small.

Senator Quentin Kopp, SB 1286, February 19, 1992

I hope that with the above information you will agree that Avalon is, indeed, a unique area of our state, and that local officials can most effectively develop local traffic regulations based on local situations. That, after all, is the whole basis for our present authority. Please allow us to continue in this vain and vote in favor of SB 1286.

Sincerely,

Wayne G. Griffin
Executive Director & CEO

cc: Mayor Hugh T. "Bud" Smith, City of Avalon
Senator Robert Beverly, 29th District
Assemblyman Tom Mays, 58th District
Assemblyman Gerald Felando, 51st District

Please note area code change to 310

Please note new FAX
phone number: (310) 510-7606

ATTACHMENT B



ASSOCIATED PRESS
Miyazawa, Clinton answer questions after their meeting Friday.

BY MICHAEL ZIELENZIGER
Mercury News Staff Writer

WASHINGTON — Signaling a major change in U.S. policy toward Japan and its giant trade surplus, President Clinton challenged Prime Minister Kiichi Miyazawa on Friday to open Japan's long-closed domestic markets — not only to inexpensive American goods but also to high-priced supercomputers, electronics and automobiles.

In a blunt, first-time meeting

with the Japanese leader, Clinton insisted that sector-by-sector negotiations must be initiated, modeled on an existing pact governing semiconductors, to pry open key Japanese markets by setting measurable targets for specific U.S. exports.

"I'm concerned not only about how much we sell, but about what we sell," Clinton told reporters in a joint appearance with Miyazawa after their Oval Office meeting.

Clinton pledged would agree by specific negoti- nettlesome tra- would then take pedited basis. talks would se- yardsticks for in- ance of trade l- economic giants

Officials said set priorities as

See

"You have to realize that law enforcement doesn't like bikers and this gives them another excuse to hassle them."

Law may be riding with bikers who wear 'beanies'

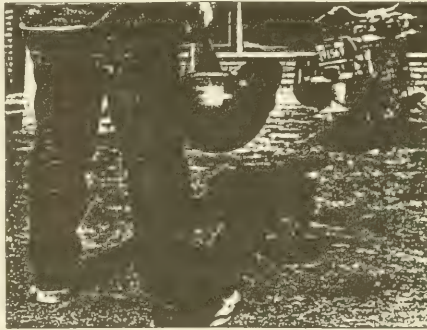
BY GARY WEBB
Mercury News Sacramento Bureau

SACRAMENTO — For nearly a year, the California Highway Patrol and local police agencies have been waging a war of questionable legality against motorcyclists who wear a small, black helmet known as a "beanie."

Anywhere from 5,000 to 15,000 bikers have been cited since June, when the CHP announced that beanies were unsafe and began ticketing wearers as if they had no helmet at all.

But there is considerable doubt — even among judges and police officers — that the bikers have violated any laws. Rather, the scofflaws may turn out to be the CHP and the police who followed its advice.

Bikers, who recently filed a



TOM VAN DYKE — MERCURY NEWS

Since June, authorities have been ticketing wearers of the beanie

federal class-action suit against the CHP in San Diego, say the agency is enforcing a law of its own creation, striking out against the most outspoken opponents of the helmet law. Most motorcyclists who wear beanies fit the public's image of an "outlaw bik-

er" — leather-garbed toughs astride loud, low-slung Harley Davidson motorcycles.

"You have to realize that law enforcement doesn't like bikers and this gives them another excuse to hassle them," said Skip Raring, a Costa Mesa

See **HELMETS**, Back Page

Legal may p AMD of Inte

BY REBECCA SMI
Mercury News Staff Writer

Sunnyvale cor- er Advanced M- won a surprise- day likely to em- selling clones o- Corp.'s phenom- 486 microproces-

Such a move the semiconduc- could benefit c- since it would- makers a second- have chips for d- ble computers. I- that market all- has ridden that- come the bigge- the world.

In all likelyh- undercut Intel' chips, which ra- \$640 and typic- costly compon- computers. AMI- ning to start sel- sion in about tw- day's ruling cou- advantage of a- an unprepared I-

See **INTEL**

COVER STORY
SAN JOSE MERCURY NEWS
APRIL 17, 1993

'Beanie' helmets' illegality questioned

■ HELMETS

from Page 1A

security lawyer who's taken 70 beanie cases to court — and gotten 69 of them dismissed. Raring, who rides a Harley and wears a beanie, says he's been pulled over 12 times since the helmet law went into effect last year.

The CHP says those accusations are false. The only issue it cares about is safety, said CHP spokesman Sam Haynes. Once the agency learned the helmets failed federal safety tests, the agency was obliged to act, Haynes said.

But in doing so the patrol wandered off into the maze-like world of federal vehicle safety regulations, a journey which Haynes acknowledged has been an eye-opener.

"I think you could say we were surprised," he said.

Bikers made run on beanies

Shortly before the helmet law took effect, in January 1992, bikers began snapping up the beanies, believing that the small, soup bowl-shaped helmets would be the least aggravating way of complying with a law many of them detested. The beanie quickly became a symbol of contempt for the new law.

"That's why I wear it. Damn right," said Christopher Swenk, a Harley rider from Sonora.

The beanie that captured California's market was made by E&R Fiberglass of Tacoma, Wash. The helmets sold for around \$40, came with a U.S. Department of Transportation certification sticker and an affidavit from the manufacturer that the helmets met all federal safety standards.

Under California's helmet law, that's all a helmet needs to be legally sold and worn.

The CHP, however, viewed the helmet as an end-run around the law and didn't believe the beanies could pass the federal tests. So, in April 1992, it asked the National Highway Traffic Safety Administration (NHTSA) to test E&R's helmets.

The helmets failed the tests. On June 1, the CHP issued a bulletin

to all police agencies in the state, saying the E&R beanie was an "unapproved" motorcycle helmet and it immediately would begin ticketing wearers for violating the helmet law.

Many local police followed suit and thousands of bikers were stopped, ticketed and, in many cases, had their helmets taken from them. Those whose helmets were confiscated were often forced to park their motorcycles by the roadside until they got another helmet. Even bikers who wore beanies made by other companies were being cited.

The tickets weren't cheap. With penalty enhancements, fines ranged from \$100 to nearly \$300.

To many bikers, the ticket-writing campaign smacked of unfairness. Jeff Brown, 33, of Fairfield, said he took his beanie to a CHP post in early 1992 and was told the helmet was legal. Seven months later, he was ticketed and fined.

But there was one problem with the CHP's announcement: It was wrong. The beanie hadn't been disapproved by the federal government. It had merely failed some safety tests. Disapproval, the CHP found to its chagrin, was an entirely different matter.

'No formal disapproval'

"Apparently there has been some misunderstanding in California," NHTSA's chief counsel, Paul Jackson Rice, informed Highway Patrol Commissioner Maurice Hannigan in a January 1993 letter. While saying that it was "abundantly clear" the E&R helmets were unsafe, Rice said there "has been no formal disapproval by DOT or any other federal agency. . . . (NHTSA) neither approves nor disapproves a manufacturer's product."

That job, Hannigan was informed, rests with the helmet maker. Only when the manufacturer decides its product is unsafe does it lose its DOT safety certification. E&R's owners say they've never agreed their helmets are faulty and they dispute the accuracy of the federal tests.

"It does have a fox-guarding-



Larry Seghieri and Ann Ponz have be

the-henhouse quality to it," CHP spokesman Haynes said, adding that the CHP was unaware of manufacturer self-certification when it ordered the crackdown. But he said once the E&R helmets failed the tests, they became illegal as far as the CHP was concerned.

Attorney Raring says that's absurd. Even if it were true, he said, bikers who bought the helmets shouldn't be penalized for it.

Comparison with Corvettes

"There's just been a recall for every Corvette from 1984 to 1991



TOM VAN DYKE — MERCURY NEWS

ri and Ann Ponz have both received tickets for wearing the "outlawed" helmets

se quality to it," CHP Haynes said, adding HIP was unaware of her self-certification. Raring ordered the crackdown once the E&R helmets tests they became illegal as the CHP was con-

Raring says that's about it. If it were true, he said, he bought the helmets and penalized for it.

ban with Corvettes
just been a recall for the 1984 to 1991

for their seat belts. But the CHP isn't pulling over Corvettes and writing tickets for not wearing a seat belt. You don't see them confiscating safety belts," Raring said. "But that's what they're doing with bikers."

In one court case, the CHP was ordered to reveal its legal authority for writing beanie tickets: all it produced was a news release announcing a recall of the E&R helmet — written two months after the patrol's crackdown began.

Some judges have begun throwing beanie citations out of court. In Butte and Orange counties,

judges have declared the law unconstitutional, saying there was no way a rider could be expected to know which DOT-certified helmet could actually pass a federal safety test and which couldn't.

Some police as well have quietly decided not to follow the CHP's lead. Sacramento police, for instance, do not write beanie tickets, officers there said.

"The way I look at it, if the guy went out and bought a helmet, he's at least trying to comply with the law," said one Sacra-

mento motorcycle patrol officer, who asked not to be named.

Police in San Jose and Santa Clara County, however, have enforced the beanie ban with a vengeance. Last November, San Jose police set up near a Hell's Angels clubhouse and pulled over every beanie-wearer that went by, seizing their helmets and writing tickets. Santa Clara County deputies also have been seizing helmets, but that policy is in the process of being changed. Lt. William Slack said. Slack said those whose helmets have been seized will get them back.

rage AMD to roll out Intel-based chips

7C-312 3379



December 6, 1992

TO WHOM IT MAY CONCERN:

On December 5, 1992, at approximately 3:30 p.m. I left the Hog Farm with six other bikes. Greg and Donna Bush and I were at the front of the pack. We got on 280 South, signaled left and were riding second to the right lane when a police car pulled in behind us, cutting us off from the rest of the pack. They put their lights and sirens on. We signaled and moved into the slow lane and then onto the shoulder and stopped.

Two police officers got out, pulled Greg up to their car and "shook him down". I was too far away to hear everything clearly but I did notice the young, white officer go over to Greg's bike, take out a piece of paper and use Greg's motorcycle tank as a backboard to write on. I said loudly "look, he's using his paint job to write on!" The policeman looked up, smirked, and went back to writing.

The officers then asked me to step up. I gave them my license and was then told to spread my legs. One of the male officers proceeded to body search me, even though there was not a woman officer present. He felt up and down my whole body. He then asked me to take off my helmet. I knew it was within my rights not to comply with his request but I was afraid that, because of the officers' belligerent attitude, they would take me to jail if I refused. I took off my helmet and they then stated that it was an illegal helmet and confiscated it. I told them that it was legal, but they said "no, it isn't--we're using it for evidence". During the questioning the other officer went over to my motorcycle and used my tank's custom paint job as a backboard to write on.

The officers detained us for more than 45 minutes. They wrote both Greg and I tickets, and told us to either walk the bikes home or have them towed. We have witnesses to the whole encounter.

Thank you,

Stacy L. Clark

JOY IN RIDING - PRIDE IN LIVING - CLEAN & SOBER

April 15, 1993

To whom it may concern:

The following event happened on the evening of November 13, 1992: Around 6 to 10 San Jose police officers set up a road block on a street near a freeway exit. The cops claimed to be performing a "routine helmet check." They pulled over only "biker-types" regardless if they were on a motorcycle or in a car or truck. I would describe their behavior to be like sharks in a feeding frenzy as they issued citations on every possible thing, no matter how small. For example, a citation for illegal brakes issued to my husband was dismissed during the subsequent trial by the citing officer because it was written in error. The police also confiscated anywhere from 7 to 9 helmets, some of which were unquestionably "legal." When we asked the cops what we should do about our motorcycles now that we had no helmets, a cop responded with "push 'em or park 'em."

I was frisked by two cops. I thought that one of the cops was taking an exceptionally long time on my breasts. So I took off my jacket and offered it to the cop rather than continue to subject myself to this inappropriate search. He took no interest in continuing his search once the jacket was removed. There are reports of other women being searched in a similar fashion.

At the trial, my persistent protest lead Officer Clifton, the citing officer, to admit to the judge that they were practicing "selective enforcement" on the night of November 13. The judge listened but said that fact was not relevant to the trial. Clifton also cited my husband, Larry, for a modified exhaust system saying that he "in fact, did hear his motorcycle as it approached us and later as it left us...in both cases it was excessively loud." Larry made it clear that "I don't roar into a group of cops!" And as it turns out, Clifton was not the officer that examined Larry's pipes, and Larry and I did not leave the scene until friends brought us other helmets--all officers had left by then. I have a tape recording of the trial. We maintain that our helmets meet the legal requirement.

I believe that certain police officers are using the helmet law to harass a certain style of individual. Please help us stop this abuse.

Ann Dollar
282 South Montgomery St.
San Jose, CA 95110

Ann Dollar
4/15/93

STATEMENT OF HOWARD M. SMOLKIN
ACTING ADMINISTRATOR
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

May 4, 1993

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the National Highway Traffic Safety Administration's (NHTSA) implementation of the highway safety provisions of the "Intermodal Surface Transportation Efficiency Act of 1991" (ISTEA). With me are Adele Derby, Associate Administrator for Regional Operations, Michael Brownlee, Associate Administrator for Traffic Safety Programs, and George Parker, Associate Administrator for Research and Development.

As Secretary Peña highlighted for you on April 27, NHTSA's highway safety programs are among ISTEA's major concerns. These programs, whose funding level we propose to increase by 14 percent over 1993 levels, are designed to help the States, their political subdivisions, and local communities deal with a broad range of highway safety problems.

Before discussing our implementation of ISTEA's highway safety provisions, I would like to give you a brief status report on highway safety throughout the nation.

Assessments of highway safety programs should begin with one fact firmly in mind: the number of people killed on our highways. This year we have good reason to be encouraged. In 1992, the nation experienced its lowest motor vehicle fatality toll in 30 years--39,200. This represents a five percent drop from 1991's total of 41,462.

In 1992 the fatality rate, a key measure of highway safety, fell to 1.8 deaths per hundred million vehicle miles traveled, an all-time low. This contrasts with the rate of 2.8 in 1982. If the 1982 fatality rate had remained unchanged, an additional 22,000 people would have lost their lives in 1992.

Several factors contributed to this trend -- safer roads, safer vehicles, higher levels of safety belt use, and the growth of public sentiment against drunk driving -- and many of these factors are directly influenced by the highway safety programs authorized by ISTEA.

While we have made much progress in highway safety, motor vehicle crashes continue to be the nation's number one cause of death for persons aged 5-32 and the biggest cause of serious injuries. Much more remains to be done to reduce the magnitude of the highway safety problem.

We also must recognize the enormous economic cost to society of these crashes. In 1990, the last year for which NHTSA has complete data, fatalities and injuries from highway crashes cost the nation \$137.5 billion. As Secretary Peña has stressed, "effective highway safety programs are good economics as well as good medicine."

The Section 402 highway safety program, the core element of the Federal highway safety effort, is central to our efforts to implement ISTEA. This program, which has improved public safety through its focus on essential highway safety needs, such as drunk driving prevention and safety belt use programs, provides funds to the States and their political subdivisions for a broad array of programs that the States adapt to meet their own unique requirements.

Before the enactment of ISTEA, we determined that eight programs were most effective in reducing highway crashes and their resulting deaths and injuries: (1) alcohol/drug impaired driving; (2) police traffic services; (3) occupant protection; (4) emergency medical services; (5) traffic records; (6) pedestrian/bicycle safety; (7) motorcycle safety; and (8) roadway safety. Projects in these areas, designated as "National Priority" program areas, qualify for funding under an expedited approval process.

ISTEA requires us to consider adding two programs to this list: speed enforcement and pupil transportation. This June we will issue a notice soliciting public comment on whether to add these programs. If they do not receive this priority designation, we are directed to explain the decision in a report to Congress.

In addition, ISTEA requires that guidelines be issued for six program areas. Since we have already issued guidelines for all areas except speed enforcement and occupant protection, we will issue a second notice in June on new guidelines for those areas and update the guidelines for the current priority programs.

The Section 410 alcohol-impaired driving program, established by the "Drunk Driving Prevention Act of 1988," was largely revised by ISTEA. Among other modifications, this revision of 410 provided additional basic and supplemental grant criteria, and changed the formula used to determine the amount of grant funds for adopting and implementing drunk driving prevention laws and programs. These laws and programs include prompt license suspension, lower blood alcohol content levels, sobriety checkpoints, self-sustaining community alcohol programs, control of alcohol access by youth, and mandatory sentences for repeat offenders.

In 1992, we published an Interim Final Rule to implement these revisions. During FY 1992, 17 States received grants under the 410 program revised by ISTEA. This April, we published a Final Rule, making additional changes to the 410 program required by the FY 1993 DOT Appropriations Act. We anticipate that the States eligible for 410 grants will increase.

No highway safety program established by ISTEA has been the subject of more discussion than the Section 153 safety belt and motorcycle helmet grant program. Beginning in FY 1992, ISTEA authorized three years of incentive grants to States with both belt and helmet use laws. To qualify the first year, a State must have both laws in effect; for second and third-year grants, a State must keep those laws in effect at all times and achieve specific compliance levels.

The statute provides that a State without both laws before October 1, 1993, must transfer 1.5 percent of its fiscal year 1995 Federal highway funds in certain programs (3 percent each succeeding year) to its Section 402 highway safety program.

In FY 1992, NHTSA awarded \$12 million in Section 153 grants to 17 States, the District of Columbia and Puerto Rico. Another \$12 million will be available in FY 1993. Currently, 21 States, the District of Columbia and Puerto Rico will be eligible to receive these grants in FY 1993.

In 1992, NHTSA issued a notice on survey guidelines the States must follow to measure compliance with belt and helmet use laws required for second and third-year grants. Last January, NHTSA and FHWA jointly issued a NPRM to define the terms of Section 153's transfer penalty. We anticipate issuing a Final Rule this June.

Also in 1992, we made grants to seven States to collect data for the \$5-million study mandated by ISTEA, to determine the benefits of safety belt and motorcycle helmet use. Through these grants, police-reported crash data will be linked with injury data collected by emergency medical services, hospital emergency departments, and rehabilitation and long-term care centers to provide the injury and cost data needed for analysis. Our report to Congress on this study is due in April 1995.

Several bills have been introduced to amend Section 153's penalty-transfer provision. In the House, H.R. 799, introduced by Congresswoman Snowe, would repeal the penalty-transfer provision. The Department opposes this bill. We believe the existing statute is a very constructive way to encourage the States to enact both safety belt and helmet use laws--two laws that contribute significantly to the reduction of motor vehicle fatalities and injuries and the related suffering and costs.

Many of the costs of motor vehicle crashes noted earlier are ultimately paid by Federal and State welfare and public assistance programs. In an era of tight budgets, these costs have a significant effect that transcends State boundaries.

Safety belts and motorcycle helmets are high on the list of measures that reduce these costs. NHTSA estimates that helmets are 29 percent effective in preventing motorcyclist fatalities, and that lap and shoulder belts reduce the risk of fatal injury by 40-50 percent.

Head injury is the leading cause of death in motorcycle crashes, and the best proven means of reducing motorcyclist fatalities is the enactment of helmet use laws. Although these laws have been a subject of continuing debate, with opponents arguing that they are an unwarranted infringement on personal liberty, the effectiveness of these laws in raising helmet use, reducing fatalities, and reducing the costs society incurs when unhelmeted motorcyclists are involved in crashes is beyond question.

ISTEA also made substantial revisions in the Section 154 national maximum speed limit program. It made permanent the limited demonstration program Congress had passed in 1987, allowing States to post 65 mph maximum speed limits on certain rural non-Interstate highways, and allowed other rural non-

Interstate highways not part of the demonstration program to be posted at the 65 mph limit, if they meet certain criteria. It also directed DOT to publish a rule setting speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and a formula for determining State compliance. Finally, it mandated a new monitoring system for collecting speed data on affected highways.

NHTSA and FHWA issued a joint NPRM last December, proposing a speed limit compliance formula and a monitoring plan for these highways. A Final Rule will be issued this summer.

The Drug Recognition Expert Training Program (DRE), established by ISTEA to help law enforcement officers identify motorists impaired by alcohol or other drugs, is moving rapidly forward. States that have initiated this program are now assuming management control of program activities. Our program plans include accelerating research to improve DRE evaluations and to shorten training to qualify a DRE officer.

The emphasis ISTEA places on highway safety research is strongly supported by the new Administration. While ISTEA retained the basic provisions of NHTSA's Section 403 highway safety research program, it also established a major departmental R&D initiative, the Intelligent Vehicle Highway Systems (IVHS) program.

Last year, NHTSA played a key role in developing DOT's IVHS Strategic Plan, submitted to Congress in December, as ISTEA required. The plan sets forth in considerable detail the objectives and milestones of DOT's IVHS program, including NHTSA's critical responsibilities for collision avoidance and system safety. In a request from our Appropriations Committee, we also prepared a separate NHTSA IVHS Strategic Plan, submitted in 1992.

NHTSA's continuing responsibility is to provide the critical safety focus for DOT's IVHS program. We have developed a research program, in cooperation with the Federal Highway Administration, to address the opportunities IVHS offers for improvements in safety, which includes the safety evaluation of operational tests. Through this program we are developing performance specifications for systems that can help drivers avoid crashes. This effort will support the Department's implementation of ISTEA's requirements for demonstrating an automated highway and vehicle prototype by 1997. NHTSA's involvement will help ensure that the prototype is designed to provide a collision-free environment under normal operation and to minimize the safety consequences of any malfunction.

This concludes my prepared remarks. My colleagues and I will be glad to answer any questions you may have.

COMMITTEES
FOREIGN AFFAIRS
BUDGET COMMITTEE

WASHINGTON OFFICE
2258 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1902
(202) 225-8306

OLYMPIA J. SNOWE
20 DISTRICT MAINE

Congress of the United States
House of Representatives
Washington, DC 20515-1902

DISTRICT OFFICES
●
ONE CUMBERLAND PLACE
SUITE 308
BANGOR, ME 04401-5000
(207) 945-0432
●
TWO GREAT FALLS PLAZA
SUITE 7B
AUBURN, ME 04210-5813
(207) 786-2451
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PRESQUE ISLE, ME 04769-3188
(207) 784-5124

REMARKS BY
CONGRESSWOMAN OLYMPIA J. SNOWE
BEFORE THE
HOUSE TRANSPORTATION SUBCOMMITTEE
ON SURFACE TRANSPORTATION
MAY 4, 1993

Thank you Mr. Chairman, Mr. Petri, and my fellow colleagues for holding this hearing on ISTEA (pronounced ICE-TEA, the Intermodal Surface Transportation Efficiency Act) safety issues. In particular, I appreciate the opportunity to discuss with you a matter of the utmost importance.

The issue I want to speak about today is Section 153 of ISTEA. As all of you know, the intent of Section 153 of the 1991 Highway bill was to provide a carrot and stick approach to manipulate the disbursement of Federal transportation funds in order to coerce states into adopting mandatory seat belt and helmet safety laws.

What I strongly object to, and will focus my remarks on, is the stick, or penalty, provisions of Section 153. These provisions penalize states that have not enacted mandatory motorcycle helmet and seat belt laws by September 30, 1993. If states fail to enact such laws they will be required to spend 1.5 percent of their total federal transportation funds on programs promoting highway safety. If a state has not enacted such laws by FY 95, then the state would be required to spend 3 percent of its monies on highway safety programs.

For my homestate of Maine, this means the State is facing the prospect of roughly \$850,000 in FY 95 transportation funds being diverted away from where the State believes it should be spent, and instead having to spend those funds on highway safety programs. In FY 96, the State could face a penalty diversion of \$1.7 million. Nationally, a total of 28 states could have over \$47 million in federal transportation funds diverted in FY 95 and over \$94 million in FY 96 and beyond annually.

America was founded on the principle of individual freedoms, and in my view Section 153 is eroding them. Whether a person chooses to wear a helmet or not is their business -- it's none of government's business. In my view, it is unwise to rely upon Federal mandates to control personal choice in the name of traffic safety.

IN MAINE CALL TOLL-FREE
1-800-432-1599

PRINTED ON RECYCLED PAPER

That is why on February 3, I introduced H.R. 799 to repeal those provisions of Section 153 that will penalize states that have not enacted mandatory motorcycle helmet and seat belt laws by September 30, 1993. A bi-partisan total of thirty-eight other Members of Congress were original cosponsors of this measure. To date, eighty-seven Members of the House of Representatives have become cosponsors of this legislation including 11 Members of this subcommittee.

I understand that during one of your recent subcommittee hearings on ISTEA, the National Conference of State Legislators expressed its view that the mandatory helmet and seatbelt law provision was one of the most infringing provisions on the rights of individual states included in ISTEA. I share that view. Currently, 27 other states, in addition to Maine, are not in compliance with federal law, and as such, would be subject to the penalty provisions of the 1991 Highway bill. Some of these states have enacted neither a mandatory seat belt nor a motorcycle helmet law, or failed to enact one or the other of these two requirements.

It is interesting to note that a minority of our 50 states have seen fit to enact mandatory laws of this nature. Since the enactment of ISTEA, only Maryland and West Virginia have taken legislative action in order to come into compliance. Furthermore, since the beginning of this year 14 states have taken legislative action to defeat mandatory helmet laws. And four states have adjourned without passing mandatory helmet laws. In Maine and Indiana, the bill filing dates have passed without mandatory helmet law bills being introduced. And in four other states mandatory helmet legislation has not even been introduced.

Simply put, the federal government should not unilaterally impose its will on states, like Maine, that chose not to enact mandatory motorcycle helmet laws. My legislation would ensure that states would not be held hostage by those in Washington who dictate behavior. Twenty-eight states disagree with the federal government's intrusion into what has traditionally been within the jurisdiction of individual states.

The federal government allows states to determine practically every aspect of the driving experience. States determine the age of those eligible to drive, and the restrictions placed upon them. The state also determines whether individuals must have insurance, and the inspection of the motor vehicles.

Mandatory helmet and seat belt safety laws are not constructive. The current policy circumvents individual participation and the authority of individual state legislatures to determine policy they ought to be making.

My legislation attempts to correct the coercive tactics taken to force states into adopting these laws. In my view, the penalty provisions of Section 153 are extremely counterproductive. In fact, from 1980 to 1991, when no mandatory federal helmet law existed, the number of motorcycle occupant fatalities declined 45.4%, from 5,144 in 1980 to 2,808 in 1991. The decrease in motorcycle fatalities demonstrates that states are capable of addressing safety issues without the federal government intervention.

I recognize and support the goals of Section 153 -- the reduction of the number of fatalities and severe injuries that occur on our nations highway. I do think, however, that there are more appropriate ways for us to achieve these goals. I am willing to work with the Subcommittee to craft an alternative program to the penalty provisions of Section 153 that will be eliminated by the enactment of my bill. One such alternative which could be considered is to provide grants for states that met set goals for the reduction of fatalities and serious injuries. In this way, the states have the prerogative to determine its own ways to increase safety on its highways.

The federal government should not circumvent the states prerogative to determine their own ways to increase safety on their highways. States and motorcyclists have been at the forefront of improved highway safety programs. There are 41 states that have funded state motorcycle safety programs which are paid solely by motorcyclists through motorcycle registration and license fees. It is projected that these fees will raise over \$13 million for motorcycle safety in 1993. In Maine, \$68,000 annually is provided to motorcycle education programs. State legislatures should have the right to decide what traffic safety laws are best for their citizens, without the threat of losing control of their federal highway funds.

Thank you Mr. Chairman and Members of the Subcommittee. I would be pleased to answer any of your questions at this time.

NATIONAL RETAIL FEDERATION

701 PENNSYLVANIA AVENUE, N.W. • SUITE 710 • WASHINGTON, D.C. 20004 • (202) 783-7971

Statement of

NATIONAL RETAIL FEDERATION

on

**THE INTERMODAL SURFACE TRANSPORTATION AND EFFICIENCY ACT
OF 1991**

before the

**SUBCOMMITTEE ON SURFACE TRANSPORTATION
Committee on Public Works and Transportation
U.S. House of Representatives**

Tuesday, May 4, 1993
Washington, D.C.

**NRF TESTIMONY BEFORE THE HOUSE SURFACE TRANSPORTATION
SUBCOMMITTEE**

The National Retail Federation (NRF), the nation's largest trade group which speaks for the retail industry, is pleased to submit this testimony to the House Public Works and Transportation Subcommittee on Surface Transportation. The Federation would like to commend the Subcommittee for convening this oversight hearing to gather testimony on the implementation of the Intermodal Surface Transportation and Efficiency Act (ISTEA). NRF believes that this is an extremely vital public law that enables retailers to maintain their competitiveness and growth in the expanding world market. Although we would like to focus our comments today on the importance of a National Highway System (NHS) to the retail industry, it is also important to note that our industry recognizes the value of other transit systems to our employees and customers, and, therefore, we support full funding of the ISTEA.

The Federation represents the entire spectrum of retailing, including the nation's leading department, chain, discount, specialty and independent stores, several dozen national retail associations and all 50 state retail associations. The Federation's membership represents an industry that encompasses over 1.3 million U.S. retail establishments, employs nearly 20 million people and registered sales in excess of \$1.9 trillion in 1992. The National Retail Federation also has a sizable international membership of 1,000 stores in 50 nations abroad. Over the past three decades, the retail industry has increased U.S. employment by an average of 300,000 per year.

Retailers are in a unique position in the transportation chain. They are the link between the manufacturers and consumers, and utilize trucking as the primary method of shipment. According to one of NRF's member companies, approximately \$64 million of their merchandise is located on the highway on any given day. Retailers rely on trucking to serve as "mobile warehouses," thus reducing costs associated with inventory storage and maintenance. The current growing emphasis in the retail industry on "quick response" requires the availability of a safe, sound and efficient highway system.

The new National Highway System (NHS) created under the ISTEA will consist of 155,000 miles of interstate highways, as well as principal routes connecting air, sea, bus or rail facilities. Although the retail industry utilizes practically every mode of transportation, the NHS is crucial to the survival of the retail industry and is the key factor to be considered when developing and implementing transportation plans. A retail company's transportation manager must take into account the quickest, most cost effective way to transport goods, and blend the most appropriate forms of transportation to fit the overall needs of the company. Accordingly, a great deal of resources are dedicated to meet the transportation needs of the retail industry. In fact, total retail sales in 1992 supported approximately 450,000 jobs in the transportation area, with three out of four of those jobs relating to highway transportation.

Aside from the employment benefits which a national highway system brings to the economy, consumers are also direct beneficiaries of an efficient highway system. In order to ship and receive goods as economically as possible, many distribution centers are strategically located on principal arteries to interstate highways. As much as 20 percent of the cost of a product can be

attributed to transportation; therefore, the more efficient the transportation system the lower the cost of goods to consumers. Efficient highways mean real savings to American consumers.

Congressional focus on the NHS will also provide greater opportunities with the implementation of the North American Free Trade Agreement (NAFTA) on the horizon. At present, approximately 90% of the trade between Mexico and the United States takes place via the highway system. With implementation of the NAFTA, maintenance and expansion of the 16 interstate systems currently connecting Canada and Mexico will be of vital importance. The NHS must be developed to adequately address the transportation needs of more open trading with our North American neighbors. Sensible transportation corridors between Mexico and all corners of the United States can provide an excellent opportunity for economic prosperity for our country.

The retail industry consists of large corporations as well as single employee businesses. The transportation of goods and services is the lifeline of the industry. Retailers depend on carriers ranging from private fleets to the U.S. Postal Service to get consumer goods to market and into American homes. The priority and wise investment in a National Highway System will provide even greater opportunities for retailers to be successful in the coming century. The Federation looks forward to the expeditious designation of the National Highway System by Secretary Pena as well as full funding by the U.S. Congress.



Statement of the
Salt Institute
on
Highway Safety Issues and
Implementation of the
Intermodal Surface Transportation
Efficiency Act of 1991
presented to the
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives
May 6, 1993

Mr. Chairman and members of the Subcommittee, the Salt Institute represents this nation's salt producers who provide upwards of 10 million tons of deicing salt each year to preserve and to restore safe driving conditions when winter ice- and snow-storms hit. The recent headlines about declines in various economic indicators for the first quarter of 1993 attributing the weakness to the adverse impacts of the March blizzard on retailing, construction, etc. represent a related aspect of the problem which public works managers use our product to solve.

Highway traffic safety generally and particularly a concern for effective winter maintenance and its life-saving dimension prompt this statement as the Subcommittee examines implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) as it relates to highway safety. Our statement will focus on the role of the new, ISTEA-mandated Safety Management System created in Section 1034 of the ISTEA. A copy of our comments to the FHWA/FTA Docket No. 92-14 on this subject are appended for your further information.

Congress included the several management systems in the ISTEA because of the hopeful progress in addressing design and maintenance policies for bridges and the strong interest in upgrading pavement management to assure long pavement lives and reduced functional impairment due to congestion-creating repair and rehabilitation. The concept of the Safety Management System is to inject safety as a basic building block in all highway-related planning and policies -- building-in safety, so to speak. We wholeheartedly endorse the approach of the Safety Management System.

The Federal Highway Administration and Federal Transit Administration have proposed a rule on the Safety Management System. It is a strong start for an effective program. In order to achieve their anticipated benefits in enhancing roadway safety, however, two additional steps would be helpful.

First, the proposed rule lacks a directive to conduct and maintain an inventory of the safety features and safety-related operational and maintenance policies in each state. The bridge management system and pavement management system both include such inventories; in fact, they are the essence of the program, the baseline against which both effectiveness and progress will be measured. This apparently is not contemplated in the Safety Management System and is a major deficiency that should be remedied. This inventory should include pavement markings, signs, various forms of safety hardware and a catalogue of the various policies governing operation and maintenance which impact highway traffic safety. For example, research presented at last Fall's Transportation Research Board snow removal and ice control symposium documented an 88.3% reduction of injury accidents when effective winter maintenance operations are accomplished. A copy of the study is appended. As we say: Salt Saves Lives! The inventory of operating and maintenance policies should provide decisionmakers with the

Statement of the Salt Institute
ISTEA Implementation-Highway Safety
May 6, 1993
Page 2

opportunity to review, for example, and consider policy options for the various strategies of achieving safe winter highways as part of the Safety Management System. Similar advantages in considering improvements to highway traffic safety would be made possible if the inventories included descriptions of how pavements are marked and signed.

Second, the proposed rule includes explicit recognition of the highway safety role of operating practices and maintenance policies, but, for the same reasons mentioned above, the basic rule should be strengthened in this regard as well. The proposed language is general; a specific implementation step is needed to translate the general policy of assuring "that safety be totally integrated into the decisionmaking processes" of projects and program activities. One possible specific action which might achieve this purpose would be requiring preparation of a "Highway Safety Impact Statement" (HSIS) for each project and each operational and maintenance activity. This HSIS would, we envision, be similar to the well-known "environmental impact statement" (EIS). Like the EIS, the HSIS would focus attention on the impacts -- hopefully, benefits -- which are expected from the project. This would keep safety foremost in decisionmakers' minds and accomplish the goal of integrating safety into construction/reconstruction and operations and maintenance activities.

While great strides have been made in "designing-in" safety into vehicles and in addressing the driver factor in accident avoidance, we must never lose sight of the critical role which roadway conditions play in highway traffic safety. It's like a three-legged stool; shorting any of the three "legs" unbalances the whole effort. In this time of hard-headed budget scrutiny, we would suggest that all three areas deserve support, but that these management systems will provide new and useful data on the marginal utility or incremental value which should be useful for policy oversight and resource allocation.

The Salt Institute appreciates this opportunity to share our perspective.

Sincerely,

Richard L. Hanneman
President

Attachments: SI submissions to FHWA/FTA Docket 92-14
Marquette University highway safety research report

TA3079



April 5, 1993

Federal Highway Administration
HCC - 10 Room 4232
400 Seventh Street, SW
Washington, DC 20590

ATTENTION: FHWA/FTA Docket No. 92-14

The Salt Institute is pleased to have the additional opportunity afforded by your March 2 notice of proposed rulemaking to submit these comments relative to the Safety Management System (SMS) of section 303 Management Systems authorized by Section 1034 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

We are entirely supportive of the proposal and particularly note the improvement in the proposed rule in addressing the need to consider operational safety practices including "emergency response activities" in the Safety Management System plans.

In particular, we support the definition of "Operations" in Section 500.403 which references "emergency response activities associated with operating the highway system." We feel this broader definition recognizes the legitimate highway traffic safety role of such emergency response activities as deicing and is appropriate to include in the SMS. Details on the rationale for inclusion can be found in our comments of July 16, 1992 to the ANPR.

Addressing the issue of cross-jurisdictional consistency as is done in at least two places in Section 500.405, Policy is also highly appropriate. We commend, in particular, this description:

"The consistency in design and operation of similar type roadways must be maintained. The highway users do not always have physical clues, or realize the

700 NORTH FAIRFAX STREET • FAIRFAX PLAZA, SUITE 600 • ALEXANDRIA, VA 22314-2040
703/549-4648 • FAX: 703/548-2194

Salt Institute Comments on
FHWA/FTC Docket No. 92-14
April 5, 1993
Page 2

need to adjust their expectations, based on some jurisdictional or administrative boundary."

Needless to say, this language reflects a safety concern in varying levels of winter maintenance undertaken on different portions of the roadway. Some states have felt it appropriate to erect warning signs, for example, in jurisdictions where less salt is used for deicing to warn motorists that they are at greater risk.

Under the four major areas in the "Management Approach to Highway Safety," (b) refers to "identifying and investigating hazardous or potentially hazardous highway safety problems...." It should be made clear that such "highway safety problems" are not restricted to design/engineering hazards, but include highway safety threats due to operational practice or policy as well.

Finally, in the same section, under (e), we strongly endorse the present approach which references "operational features" and "maintenance and operational activities." If there is any possible improvement, it would seem that perhaps "practices" might be substituted for "features."

The entire SMS section has been strengthened by the well-considered changes from the ANPR.

Sincerely,



Richard L. Hanneman
President

TA3014

**Third International Symposium on
Snow Removal and Ice Control Technology**

September 14-18, 1992
Radisson Hotel South and Plaza Tower
Minneapolis, Minnesota

PREPRINT

ACCIDENT ANALYSIS OF ICE CONTROL OPERATIONS

Conducted By

Transportation Research Board
National Research Council

In Cooperation With

Minnesota Department of Transportation
American Association of State Highway and Transportation Officials
Permanent International Association of Road Congresses
Standing International Road Weather Commission
U.S. Army Cold Regions Research and Engineering Laboratory

ACCIDENT ANALYSIS OF ICE CONTROL OPERATIONS

by

David A. Kuemmel, P.E.
Assistant Professor

Rashed M. Hanbali, Ph.D.
Research Assistant

MARQUETTE UNIVERSITY
Milwaukee, Wisconsin

ABSTRACT

This research is a major study of hourly accident rates before and after ice control operations in states which primarily use salt as a deicer. The research is patterned after a major study done in Germany in the late 1980s. A study of this magnitude has never been reported in the U.S. The study included approximately 837 kilometers (520 miles) of two-lane highways and 81 kilometers (50 miles) of freeways in five maintenance districts in four states. The study was conducted during the winters of 1989-90 and 1990-91. Data on hourly traffic volumes, vehicle, time of salt application and accidents were gathered. Calculations of vehicle kilometers of travel adjusted by hourly, season and snow-reduction factors were used to derive hourly accident rates (accidents per million vehicle kilometers of travel). The before and after accident rates were compared, and a cost benefit analysis performed comparing direct costs of winter maintenance to the direct benefits of winter maintenance. The accident cost reductions were measured and benefits calculated. Standard benefit analysis was performed for reduced fuel costs and travel time due to achievement of a bare pavement.

The results for before and after periods on two lane highways (using conservative assumptions) showed accident rates 8 times higher before than after, and for freeways 4.5 times higher. A conservative benefit/cost analysis on two lane highways showed a ratio of 6.5 to 1 and on freeways, 2.0 to 1. On two lane highways winter maintenance paid for itself as soon as 71 vehicles had driven over the highway and on freeways as soon as 280 vehicles had driven over the highway.

INTRODUCTION

Highway maintenance involves all work necessary to assure that the highway system is kept safe, open to traffic, and in proper working order. During winter, the removal of snow and ice from streets, roads, and highways is a major maintenance operation. With more than 135 million motor vehicles registered in the United States and roughly 6.44 million kilometers (four million miles) of roads and streets, governments must be prepared to deal with the removal of snow and ice to insure public safety, and to reduce the adverse impact on the affected areas economy.

Snow and ice covered roads can paralyze the functioning of the community and pose a considerable threat to the public safety. They produce hazardous driving conditions which increase traffic deaths, injuries, and property damage. The general assumption has always been that snow and ice on highways causes accidents. There are a number of reasons for this assumption. Snow and ice reduce the coefficient of friction between the pavement and vehicle tires, making maneuvering of the vehicle very difficult and occasionally impossible. Ice is not always apparent to the motorist and is not uniform, so that the driver is not always prepared when he encounters an icy section on the roadway. Vehicle mobility is reduced, causing possible severe disruption of important public emergency services, such as fire, police, and ambulance operations.

Without close attention to the effective removal of snow and ice from roads, the economy of the region involved will suffer, and traffic accidents will escalate. Most activities of individuals, industries, utilities, schools, and government activities are handicapped in social and economic ways during the duration of snow and ice conditions on roads and streets.

Prior to this research project there was not extensive or mathematically sound accident research on the effects of snow and ice control (1) in the United States of America (USA).

During the late 1980's, the Technical University of Darmstadt in Germany completed an extensive research project (2) documenting the accident experience before and after winter road maintenance operations, and following a bare road pavement policy. The analysis of Horst Hanke and Christoph Levin covered over 4700 accidents, approximately 1900 casualties, on about 650 Kilometers (400 miles) of roads outside built-up areas in four representative highway maintenance centers. The cost of property damage was about DM 55 million (\$35 million). Salt was the only de-icing material used on these roads. The time was determined at which salt spreading took place, then an hourly accident analysis was conducted for 12 hours before and 12 hours after.

The results of their accident analysis is shown in Figure 1. Marquette University was approached in the Fall of 1990 by the Salt Institute to undertake a similar study, utilizing the same methodology of the German Study, but for one winter season, the winter of 1990-91 instead of for four years as was the German Study. The results of that research are reported herein.

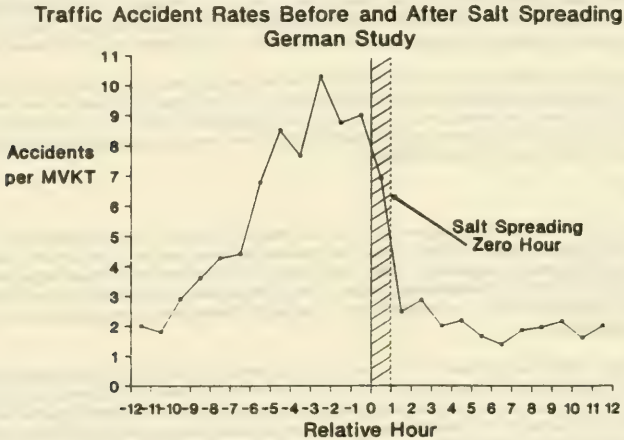


FIGURE 1

METHODOLOGY

Highway Testing Sections:

A network of two-lane undivided and divided highways of approximately 837 kilometers (520 miles) and 81 kilometers (50 miles) respectively, were selected randomly with the cooperation of authorities in New York (Wayne, Tompkins, Cortland, and Monroe Counties), Illinois (Ogle and Lee Counties), Minnesota (Rochester and Stewartville Sub-areas), and Wisconsin (Walworth County).

The 918 kilometers (570 miles) of highway networks consist of a total of 24 divided multi-lane and 102 undivided two-lane highway sections. The highway testing sections selected for analysis were primarily rural or suburban in character and had traffic volumes from 1000 Annual Average Daily Traffic (AADT) to approximately 30,000 AADT. Wherever a test section contained a variation in volumes that was considered multiple sections.

The low number of weaving areas on the two-lane sections reduced any additional variables that would affect accident occurrences. Average lane width was 3.36m (11 ft.), average shoulder width was 1.22m (4 ft.), mostly level terrain, and few restrictions to through traffic by control devices. This eliminated any question about in which lane an accident occurred and whether all the lanes were salted.

On freeways, the average lane width was 3.66m (12 ft.), divided highways, with 2-3 lanes/direction, and average shoulder width was 3.05m (10 ft.).

Traffic Volumes

Normal Traffic Volumes

Hourly traffic volume was calculated by the following formula :

$$V = AADT \times M \times D \times H$$

Where:

M = Monthly conversion factor

D = Daily conversion factor

H = Hourly index

In this project the 1990 AADT were provided from New York and Wisconsin and were calculated for Illinois and Minnesota.

In New York, Illinois and Wisconsin 24-hour counts with hourly volumes for each testing section were provided by authorities.

In Minnesota, 24-hour counts without hourly volumes were available for all testing sections. Hourly counts for 24 hours at similar nearby Automatic Traffic Recorder (ATR) Stations were provided. These counts were used as the base to calculate hourly indices for the testing sections, and these indices applied to AADTs to obtain hourly volumes.

Information needed to derive the monthly conversion factors for the traffic volumes in the testing areas was also provided by authorities in each respective area.

Day of the Week Conversion Factor

All 24-hour traffic volume counts provided by highway authorities in the four states were based on Monday through Thursday counts. These counts were used as the average day of the week (Monday -Thursday) traffic counts. A simple approach was taken to decide if the day of the week conversion factors, were required for weekend traffic volumes. An analysis was made based on the following formula:

$$\text{Traffic Accident Rate} = \frac{\text{accident frequency}}{\text{traffic volume} \times \text{highway length}}$$

and the following generated cases:

1. 24 hour count between noon Thursday and noon Friday
2. 24 hour count between noon Friday and noon Saturday
3. 24 hour count between noon Saturday and noon Sunday
4. 24 hour count between noon Sunday and noon Monday

A comparison was made between the above generated cases and the event occurrences. The following four results were likely for each of the preceding cases:

1. Under estimation of ADT and over estimation of accident rate
2. Under estimation of ADT and over calculation of accident rate
3. Over estimation of ADT and under calculation of accident rate
4. Over estimation of ADT and under calculation of accident rate

The number of over estimation cases was 43 for two-lane highways and 34 for freeways. The number of underestimation cases was 41 for two-lane highways and 29 for freeways. Since the numbers were nearly the same, there was minimal effect from not using day of the week conversion factors, and hence they were not used.

Hour of the Day

Hourly factors were generated from the hourly volumes provided or from ATR data nearby, by the following formula:

$$\text{Hourly index}_{(h)} = \frac{\text{Volume of Hour K}}{\text{Total Volume for 24-hour period}}$$

Snow Traffic Volumes

For every snowstorm, the hourly traffic volume was measured at the ATR and compared to the normal hourly traffic volume for the same location during a similar day, and at the same hour, month and year. From the comparison, hourly reduction factors were derived for the testing sections in that area during the snow storm, in order to estimate vehicle kilometers of travel (VKT).

In Tompkins County, N.Y. ATR stations were not available. Traffic volume reduction factors were derived based on similar weather conditions existing at nearby ATR locations. These factors were used in calculating the hourly traffic volume during similar snowstorms in Tompkins County, N.Y.

Reduction factors ranged from 0.80 to 1.0 with snow fall amounts less than 76.2 millimeters (three inches). Factors of from 0.71 to 0.95 were used for snow falls of 76.2 millimeters (three inches) or more.

Time of Salt Application

Participating areas in New York, Illinois, and Wisconsin have been using salt as the common deicing material. At temperatures below -3.9°C (25°F) participating areas in New York has been using mainly a mixture of Salt - CaCl₂ or in some cases abrasives-salt mixture when necessary. Wisconsin and Illinois have been using CaCl₂ to prewet salt. The participating highway agencies in Minnesota have been using abrasive-salt mixtures independent of temperature range. In New York, a few events were selected in which salt and abrasives were mixed (a ratio of from 10 to 30% salt to total mix).

For almost all two-lane highways, salt or salt/abrasive mixtures are usually applied to the middle third of the two-lane pavement and the high side of super-elevated curves in all participating areas. In most cases the trucks spread salt one way and plowed on return or the reverse of this procedure depending on snow fall. The number of applications varies by condition. In all participating test areas, the average number of applications per average storm was 2.6.

In New York State, keeping a record of each snow and ice control field operation is part of the participating highway maintenance agency work activities. A copy of the snow and ice control records, which contain information such as route number, section code, start and end time of the snow and ice field operation, section length, type of action, and quantity of deicing material used, was provided for each snowstorm. Records containing date of the snowstorm, start and end of the snowstorm, start and end time of work, temperature range, type of snow and depth of snow were also provided for each snowstorm by the authorities in each participating area in New York State.

In other participating areas a simple form was designed to serve the purpose of this research project. Route number, section code, start and end time of the snow and ice field operation, section length, and type of action were reported on the form. Records containing date of the snowstorm, start and end of the snowstorm and end time of work, temperature range, type of snow, and depth of snow were provided on a separate form for each month of the researched period.

The resultant combination of test sections (each with a uniform volume) and events (winter maintenance activity periods) resulted in sub-events which totaled 4600 and are broken down by jurisdiction in Table 1.

Test Sections, Events, Sub-Events by State and Location

County	New York				Illinois		Wisc.	Minn.	Total
	Tompkins	Wayne	Monroe	Cortland	Ogle	Lee	Walworth	Rochester & Stewartville	All
Test Sections									
2 Lane	35	31			7	3	16	10	102
Freeway			14	4	2		2	2	24
Events	53	46	24	60	8	8	14	5	226
Sub-Events									
2 Lane	2205	1426			56	18	224	50	3979
Freeway			336	240	16		28	10	620

Table 1

Compilation of Accident Rates

The methodology for accident rate calculations was as follows:

1. For each testing section, the last salt spreading time was determined during each snowstorm (zero hour).
2. For each testing section, hourly intervals were taken backwards and forwards (up to 12 hours) from the spreading time (zero hour).
3. For each testing section, traffic volume and accidents were compiled separately for each hourly interval.
4. For each testing section, vehicle kilometers of travel (VKT) were calculated for each hourly interval.
5. For all testing sections VKT and accidents of the same relative hourly interval were totalled and traffic accident rates calculated in accidents per million vehicle kilometers of travel (MVKT).

Before and After Accident Analysis

Accident frequencies are shown in Table 2. The before and after accident rates are shown graphically in Figure 2 for two-lane and freeway test sections.

Participating Area	Accident Frequency on Test Sections	
	Traffic Accidents on	
	Two-Lane Testing Sections	Freeway Testing Sections
Walworth County, WI	24	2
Wayne County, NY	75	—
Tompkins County, NY	136	—
Cortland County, NY	—	4
Monroe County, NY	—	12
Ogle County, IL	17	2
Lee County, IL	2	—
Stewartville Sub-Area, MN	4	6
Rochester Sub-Area, MN	4	—
Total	262	26

Table 2

An analysis of before and after accident rates was conducted to determine the significance of difference using sound statistical methods. The "Poison" method the "Paired t" test and a more recent and conservative statistical significance test referred to as the "Revised Decision Criteria" (Weed) (3) were conducted. All three tests showed significant difference for the before and after accident rates for each hourly period "after" selected (from 1 to 12 hours) when compared to the equivalent hourly period (one to 12 hours) "before" on TWO LANE HIGHWAYS at the 99% confidence level. Because the sample size and hence accident frequency was smaller on Freeways, the same hourly comparison showed a significant difference only for the first four hours, and only at the 95% confidence level, still significant however. Details of the statistical analysis are contained in the dissertation for the degree of Doctor of Philosophy for one of the co-authors (4).

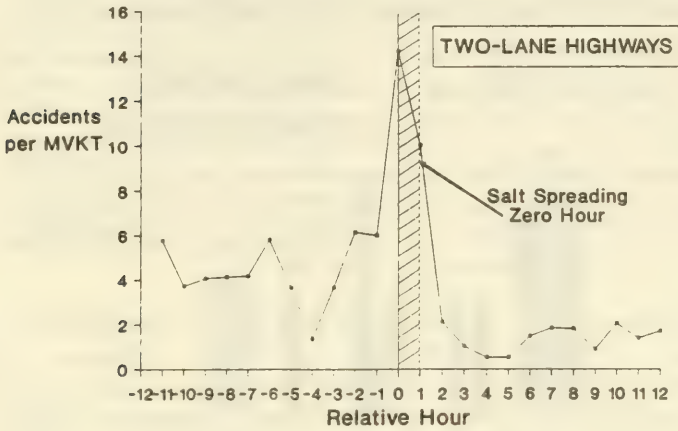
A limited amount of data was gathered in a similar fashion on the use of abrasive/salt mixtures and is shown in figure 3. Because the data was insufficient (in number of incidents) no further analysis was made and they were not included in the accident analysis or benefit/cost calculations.

Benefit/Cost Analysis

A benefit/cost analysis of snow and ice control operations using salt only as a deicer was performed. The analysis used only the direct benefits of accident reduction, savings in vehicle operating costs and travel time, and direct costs.

The time period selected for benefit/cost analysis was done very conservatively, and for the period of greatest accident significance. Hence for two-lane highways, only the four hours before/after reduction was utilized, although from figure 2 it can be seen that added benefit accrued through accident reduction beyond four hours. For Freeways only the two hours before/after reduction were used.

Traffic Accident Rates Before and After Salt Spreading



Traffic Accident Rates Before and After Salt Spreading

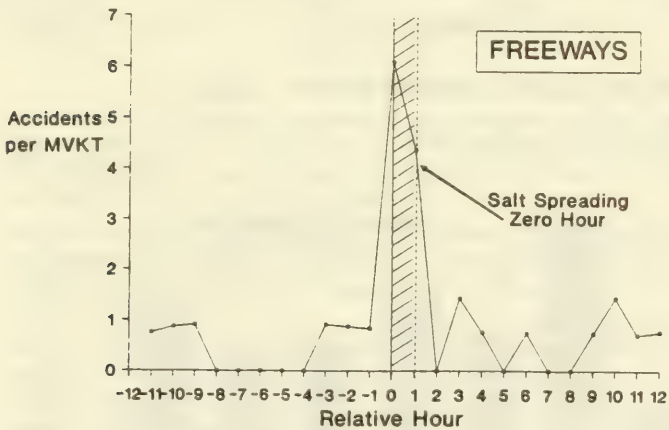


FIGURE 2

Traffic Accident Rates Before and After Salt Spreading

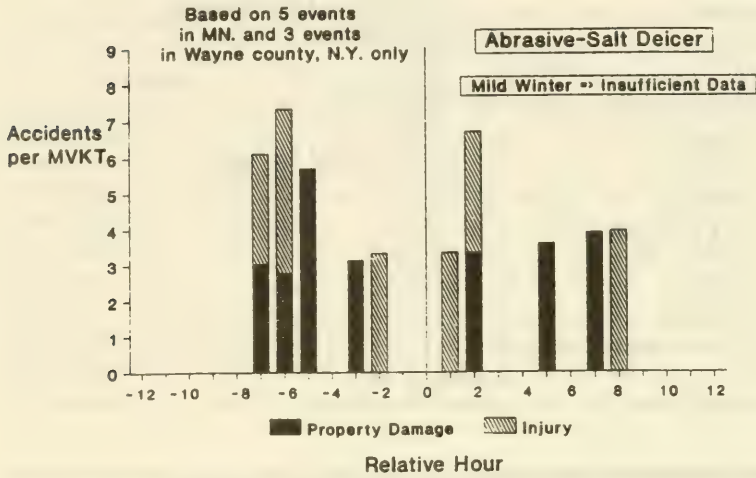


FIGURE 3

Winter Road Maintenance Cost

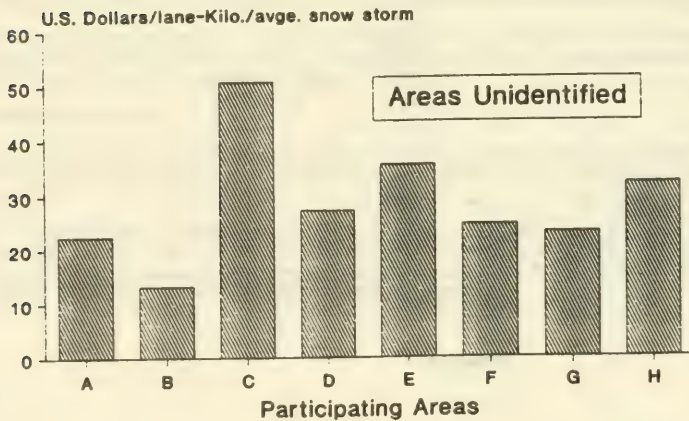


FIGURE 4

Table 3 shows the before and after accident rates for two lane highways and freeways, along with accident costs.

Rate (Per MVKT)	Self Spreading		Reduction in (%)
	Before	After	
All Accidents	7.90	1.02	87
Fatal	—	—	—
Injury	4.98	0.58	88
Property Damage	2.94	0.45	85
Accident Costs	\$625,000	\$74,000	88
Average (\$/Accident)	\$49,000	\$44,000	10

Two Lane Highways (4 Hours Before and After Only)
Table 3

Rate (Per MVKT)	Self Spreading		Reduction in (%)
	Before	After	
All Accidents	3.40	0.75	78
Fatal	—	—	—
Injury	2.55	0.38	85
Property Damage	0.85	0.37	56
Accident Costs	\$318,000	\$49,000	85
Average (\$/Accident)	\$57,500	\$45,500	30

Freeways (2 Hours Before and After Only)

Table 3 (Continued)

Direct benefits measured in this study were those of accident reductions. A recent FHWA study (5) was used for the cost of accidents. The 1991 Federal Highway Administration study used accident costs which include medical expense, emergency services, workplace costs, travel delay, property damage and administration and legal out of pocket expenses. It also included the cost of wages and household production, the cost of pain, suffering and lost quality of life.

Estimates used by the National Safety Council (6) are substantially lower for injuries and fatalities. The more recent estimates were used because of the apparent thoroughness and currentness of the FHWA study and the fact that a conservative approach was used in limiting the cost benefit period to only four hours for two-lane highways and two hours for freeways when discussing results in the conclusion.

Other direct user benefits of travel time and operating cost savings were calculated using established AASHTO Procedures (7) but were not directly measured in this study. For the savings due to snow and ice control operating costs, Claffey's work in 1976 (8) was used. The differences in gasoline consumed between snow covered or icy pavements and bare pavement in gallons per mile traveled, adjusted for travel speed and multiplied by vehicle kilometers of travel (VKT), were used to calculate excess fuel consumption. The average price of gasoline by geographic region for that time period was also used to arrive at the savings in operating costs. Other vehicular operating and fixed costs were not considered.

The other user benefit calculated but not measured was travel time. Time savings were estimated using a conservative speed reduction assumption 16.1 kilometers per hour (KPH) (10 MPH) on two-lane highways (25% of their average normal speed) and 16.1 KPH (10 MPH) on freeways (15% of their average normal speed). This was more conservative than the speed reductions measured in prior work (9). The value of travel time of \$3.00 in 1975 (7) was inflated by using the Gross National Product (GNP) index rather than the Consumer Price Index (CPI) since this resulted in a more conservative estimate of travel time savings of \$6.65 per hour for 1990.

The direct cost of winter maintenance operations, includes direct labor, fringe benefits, material, equipment operation and amortization, and any other cost included as a direct cost by the states, including in some cases supervision, dispatching, etc., but excluding any indirect costs. The data was gathered for the entire winter in each maintenance district along with total lane miles of highway and total number of events involved in each district and is shown in Figure 4. This was averaged for the districts utilized and an average unit cost in \$ per lane kilometer per operation calculated. This unit cost was then applied towards the number of events and lane kilometer (miles) of test sections used in each district to arrive at a cost figure for all operations. This was a conservative estimate for purposes of this research since it was the cost of an 'average' storm. Major storms impacted this average cost (increasing the average cost) but the major storms were not used for this research. So the costs are somewhat overstated (conservative) for that reason.

The results of the total cumulative benefits in U.S. dollars are shown in Figure 5 for both two-lane highways and freeways. The results are also shown in Table 4, in the form of cents per VKT.

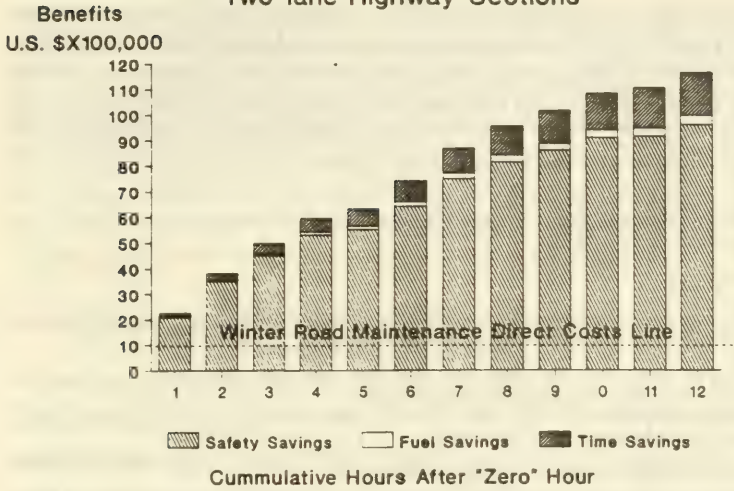
TOTAL OPERATING COSTS BEFORE AND AFTER						
Cost Category	Two -Lane Highways ¹			Freeways ²		
	Costs (Cents per Vehicle Kilometer)			Cost (Cents per Vehicle Kilometer)		
	Icy	De-Iced	Variation	Icy	De-Iced	Variation
Accident	38.8	4.60	-34.2	19.6	3.0	-16.6
Time	13.8	10.3	-3.5	8.3	6.9	-1.4
Operational	4.5	3.8	-0.7	5.3	4.8	-0.5
Total	57.1	18.7	-38.4	33.2	14.7	-18.5

¹Four hours before and after

²Two hours before and after

Table 4

Winter Road Maintenance Direct Benefits Two-lane Highway Sections



Winter Road Maintenance Direct Benefits Freeway Sections

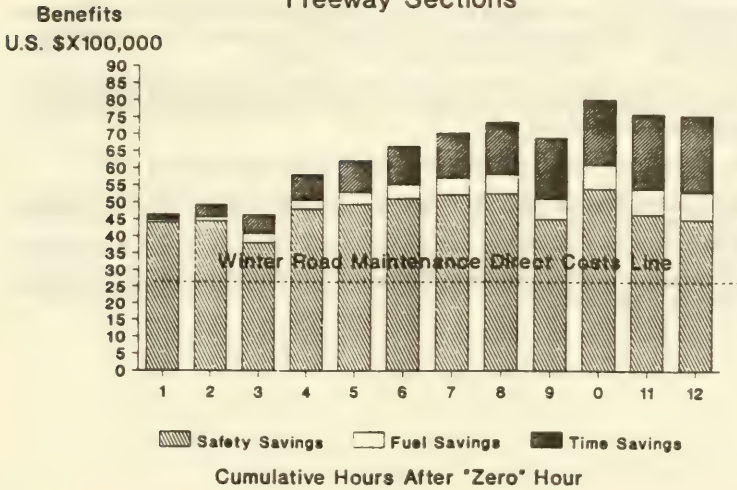


FIGURE 5

CONCLUSIONS

Results very similar to those in Germany occurred in this study. Differences between the highway network utilized in Germany and in the USA resulted in differences in the shape of the hourly accident rate curve. The reason for the difference is that in Germany the maintenance districts analyzed had responsibility for all roads including local roads. Hence there was a longer time period involved from the beginning of snowfall to completion of the entire operation. Local road priority followed arterials. In this research study most two lane highways (except approximately one-third of the test sections in Walworth County, Wisconsin which were County Trunk Highways) were state highways. Hence they had a higher priority. From observations made by the researchers, the time of applications closely followed the time of the ice conditions on the highway, since all the test sections were major or minor arterials (or in the case of Walworth County, Wisconsin some collectors) and none were local roads.

The conclusions are summarized under the appropriate highway type. All rates are in accidents or injuries per million kilometer miles of travel (MVKT).

Two Lane Highways

Winter maintenance, using salt or salt and CaCl_2 only as deicers, reduced accidents as follows (comparing only 4 hours before and after):

- a) The rate for all traffic accidents before salt spreading is about eight times higher than that after (7.90 accidents/MVKT before and 1.02 accidents/MVKT after);
- b) The rate for injury traffic accidents is about nine times higher than that after (4.96 injury accidents/MVKT before and 0.58 injury accidents/MVKT after);
- c) The rate for property damage (PD) traffic accidents is about seven times higher than that after. (2.94 PD accidents/MVKT before to 0.45 PD accidents/MVKT after);
- d) The severity of traffic accidents is reduced. The ratio of injury to property damage accident rates before (4.96/2.94 or 1.68) is about 30% higher than the same ratio after (0.58/0.45 or 1.29);

Winter maintenance reduced traffic accident costs from "before" to "after" by 88% and reduced the average cost of an accident by 10%.

- a) The traffic accident costs rate before was \$388,200/MVKT (\$625,000/MVMT) or 38.8 cents/VKT (62.5 cents VMT) and the cost rate after was \$45,963/MVKT (\$74,000/MVMT) or 4.6 cents/VKT (7.4 cents/VMT).
- b) The average cost of an accident before was \$49,000 and after \$44,000.

Travel time costs were reduced from 13.8 to 10.3 cents/VKT (22.2 to 16.6 cents/VMT) and operational costs reduced from 4.5 to 3.8 cents/VKT (7.3 to 6.1 cents/VMT). Total direct operating costs were reduced from 57.1 to 18.7 cents/VKT (92 to 30.1 cents/VMT).

Winter maintenance resulted in direct user benefits greater than the direct maintenance cost.

- a) During the first four hours after zero hour, the direct road user benefits were \$6.50 for every \$1.00 spent on direct maintenance costs for the operation.
- b) The average direct costs are offset by direct benefits as soon as 71 vehicles have driven over the highway.
- c) The winter road maintenance service pays for itself within the first 25 minutes of the first one hour after the "zero" hour of salt spreading.

Multi-Lane Divided Freeways

Winter maintenance using salt or salt and CaCl_2 only as the deicer reduced accidents as follows (comparing only 2 hours before and after).

- The rate for all traffic accidents before salt spreading is about 4.5 times higher than that after (3.40 accidents/MVKT before and 0.75 accidents/MVKT after);
- The rate for injury traffic accidents is about seven times higher than that after (2.55 injury accidents/MVKT before and 0.38 injury accidents/MVKT after);
- The rate for property damage (PD) traffic accidents is about seven times higher than that after. (0.85 PD accidents/MVKT before to 0.37 PD accidents/MVKT after);
- The severity of traffic accidents is reduced. The ratio of injury to property damage accident rates before (2.55/0.85 or 3.0) is about 200% higher than the same ratio after (0.38/0.37 or 1.0);

Winter maintenance reduced traffic accident costs from "before" to "after" by 85% and reduced the average cost of an accident by 30%.

- Traffic accident costs rate before was \$196,273/MVKT (\$316,000/MVMT) or 19.6 cents/VKT (31.6 cents/VMT) and the cost rate after was \$30,435/MVKT (\$49,000/MVMT) or 3.0 cents/VKT (4.8 cents/VMT).
- The average cost of an accident before was \$57,500 and after \$45,500.

Travel time costs were reduced from 8.3 to 6.9 cents/VKT (13.3 to 11.1 cents/VMT) and operational costs reduced from 5.3 to 4.8 cents/VKT (8.6 to 7.8 cents/VMT). Total direct operating costs were reduced from 33.2 to 14.7 cents/VKT (53.5 to 23.8 cents/VMT).

Winter maintenance resulted in direct user benefits greater than the direct maintenance cost.

- During the first two hours after zero hour, the direct road user benefits were \$2.00 for every \$1.00 spent on direct maintenance costs.
- The average direct costs are offset by direct benefits as soon as 280 vehicles have driven over the highway.
- The winter road maintenance service pays for itself within the first 35 minutes of the first one hour after "zero hour" of salt spreading.

Others

Inconclusive results from salt and abrasive mixtures were obtained due to limited experience. The results are shown in Figure 3. A major effort on the scale of this test is recommended for further research and is currently beginning.

This methodology is suggested as a state-of-the-art for benefit/cost analysis of deicing efforts.

Research on the indirect benefits of winter maintenance is noticeably lacking and should be addressed with a substantial study like that of the indirect costs of ice control (10).

This Report is based on a doctoral dissertation submitted to Marquette University (Milwaukee, Wisconsin) Graduate School by Rashad M. Hanbali (4). For a more thorough discussion of the methodology, readers are referred to the 305 page dissertation.

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- (4) Hanbali, Rashad M., (1992), "Influence of Winter Road Maintenance on Traffic Accident Rates," Doctoral Dissertation, Department of Civil and Environmental Engineering, Marquette University, Milwaukee, Wisconsin, 1992.
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- (6) National Safety Council, Accident Facts, National Safety Council, Chicago, Illinois, 1991.
- (7) American Association of State Highway and Transportation Officials, "Economic Analysis," A manual user benefit analysis of highway and bus-transit improvements, AASHTO, Washington, D.C., 1977.
- (8) Claffey, Paul J., "Passenger Car Fuel Consumption as Affected by Ice and Snow," Transportation Costs, Highway Research Board No. 383, National Research Council, Washington, D.C., 1976.
- (9) Welch, Robert H., Etal, "Economic Impact of Highway Snow and Ice Control," National Pooled Fund Study, FHWA Report RD-77-20, Washington, D.C., 1976.
- (10) Transportation Research Board, "Highway Deicing," Special Report 235, Washington, D.C., (1991).

BIOGRAPHICAL-SKETCH

David A. Kuemmel, P.E.
Assistant Professor
Civil & Environmental Engineering
Marquette University
Milwaukee, Wisconsin

David Kuemmel joined the Civil and Environmental Engineering Department in August of 1989 on a full-time basis. He is responsible for the department's activities in transportation engineering and public works management. He teaches graduate and undergraduate courses as well as directing research projects. He previously lectured in both graduate and undergraduate courses in civil engineering for ten years on a part-time basis between 1960 and 1970 and again in 1989.

TRANSPORTATION

When Kuemmel joined Marquette he brought 35 years of transportation engineering experience with the City of Milwaukee, where he rose from a Civil Engineer I to Commissioner of Public Works. His experience includes highway construction, highway design and planning, design supervision, transit planning, traffic planning and design, highway lighting planning and design, parking structure planning and operation, parking management, transportation system management and capital budgeting for transportation infrastructure. Innovations include working on the region's first land use-transportation plan, preparation and implementation of a UWM campus transportation management plan to reduce auto commuting, combining shuttle buses, remote parking, express buses and extensive parking restrictions and enforcement to force a change of mode. He formulated and implemented a resident parking permit program for commuter-impacted areas, and participated in the German/American Symposium on Neighborhood Traffic Management, in West Germany in 1980 and later implemented Milwaukee's first planned traffic management project in the North Division Neighborhood to control crime and accidents and presented the results in London, England at the Institute of Transportation Engineers (ITE) international meeting in 1983. He developed and implemented a revised street lighting installation and reconstruction policy for Milwaukee, and developed and implemented a \$10 million, six-year program to rebuild the City's deteriorating parking garages, while simultaneously beginning construction of 3000 added spaces to serve Milwaukee's Downtown development boom.

PUBLIC WORKS

As Commissioner of Public Works for six years from 1984 through 1988, he was responsible for the planning, design, construction, maintenance and operation of all streets, alleys, highways, sidewalks, bridges, street trees, street lighting, traffic control, wired municipal communications, municipal equipment, public buildings and grounds (except schools), sewers, and water production and distribution facilities. In addition he was responsible for the collection and disposal of solid waste, and all snow removal and ice control. He served as contract officer for approximately \$35 million annually of public works. The department had 2700 employees.

As Commissioner of Public Works and Chairman of Milwaukee's Capital Improvements Committee, Kuemmel developed and expanded a standard format for reporting infrastructure conditions for the city's \$6.5 billion physical plant. He also initiated condition reporting systems

linking maintenance practices and funding levels, which were cited by the American Public Works Association (APWA) Research Foundation Report, Good Practices in Public Works, published by the National Council on Public Works Improvement (NCPWI). He also developed and refined the first goals and objectives and an improved progress reporting system for the City's \$300 million Six Year Capital Improvements Program.

EDUCATION AND PROFESSIONAL AFFILIATIONS

B.S. in Civil Engineering: Marquette University, 1954
 M.S. in Civil Engineering: University of Wisconsin-Madison, 1960
 Fellow of American Society of Civil Engineers (ASCE)
 Fellow of Institute of Transportation Engineers (ITE)
 Member of American Public Works Association (APWA)
 Member of National Society of Professional Engineers (NSPE)
 Member of Wisconsin Society of Professional Engineers (WSPE)
 Member and Past President (1988-1989) Engineers and Scientists of Milwaukee (ESM)
 Active for 20 years in Career Guidance activities with professional societies in the Milwaukee area.

NATIONAL TRANSPORTATION ACTIVITIES

His career also includes service on several national committees of ASCE and ITE. He has been on the National Committee on Uniform Traffic Control Devices (NCUTCD), a standards setting committee, since 1975, including six as chairman of the Signals Technical Committee. In 1990 he was elected Vice Chair for Programs for the NCUTCD. In APWA he served as President (88-89) of the Executive Council, Institute for Transportation (88-89) which is the group responsible for national transportation policy and program recommendations for the association. Kuemmel has served on several expert panels of the National Academy of Science-Transportation Research Board (TRB) and is currently on the Highway Operations Committee for the Strategic Highway Research Program (SHRP).

HONORS AND AWARDS

Tau Beta Pi and Xi Epsilon Honor Societies, Marquette University, 1954
 Career Guidance Award, Society of Women Engineers, Milwaukee, 1977
 Annual Alumni Award "Outstanding Achievement in Professional Life"; Pius XI High School, Milwaukee, 1983
 Professional Achievement, Marquette University, Engineering, 1987
 Top 10 Public Works Leaders of 1987, APWA, 1988.
 "Standing Ovation Award," 1990, Milwaukee Convention and Visitors Bureau.

PERSONAL

Outside interests include jogging, photography and rose gardening. Currently serving on St. Matthias Parish Council and active for 30 years in parish leadership. Married in 1954 to Marie Lewis, the Kuemmel's have 8 children and 9 grandchildren.

ADDITIONS TO THE RECORD

SUBTRANS

The Future for Freight Transportation

The efficiency of a transportation infrastructure is enhanced by segregating the movement of people from the transportation of freight. People demand speed, flexibility and convenience whereas freight requires cost efficiency and punctual deliveries and these constraints are not compatible.

Our railroad industry became the most efficient in the world once they abandoned passenger services and could concentrate on freight as evidenced by our rail freight rates which are substantially lower than those in Europe or Japan where their railroads are still encumbered with passenger trains.

The problem is that we have transferred the passenger/freight conflict from the rails to our highways where trucks carrying freight compete on the same roads with cars carrying passengers. The next evolution in our transportation infrastructure must be to develop a new freight corridor which will displace trucks from our interstate highways. A little known new technology may provide the answer.

It started with the development of pneumatic capsule pipelines designed to transport bulk materials, like coal, in tubular vehicles rolling on wheels within a pipeline and propelled with air pressure provided by pumps. Such systems are operating in Russia and Japan while comparable technology has been developed here but, to date, no commercial systems have been placed in operation. However, an American company has developed a larger version of this system, named SUBTRANS, which has the potential of moving freight at substantially lower cost than long-haul trailer-trucks.

SUBTRANS uses dual underground ducts with a 2 meter (6½ feet) internal diameter. Rather than using air pressure, the freight

modules are propelled by linear induction propulsion. Each module is 25 feet long and designed to carry palletized cargoes up to a capacity of 8 tons. The system operates automatically, except for the loading and discharging of the modules though, in time, this function can also be automated.

Though at first glance it may appear that the capital cost of such an underground system will likely be prohibitive, an economic analysis shows that it can be justified because the relatively high cost of trucking. SUBTRANS is expected to displace nearly all trailer trucks from the inter-city highways with obvious benefit to motorists in the form of reduced traffic, accidents and fatalities, while roadbed and bridge maintenance costs would be drastically lowered. It is estimated that trucks account for 90% of the damage caused to our roads and bridges.

Title VI, Sec. 6020 of ISTEA provides for conducting a Study of Underground Pipelines for the Movement of Commodities which will be undertaken by the Volpe Systems Transportation Center at Cambridge, MA. It is expected that this Study will confirm that SUBTRANS is a new transportation technology whose time has come and early implementation will go a long way to solving our nation's transportation problems. Under Sec. 6009 of ISTEA there is the admission on the part of Congress that "despite the annual expenditure in excess of \$10 billion on surface transportation and its infrastructure, the Federal Government has not developed a clear vision of how the surface transportation system of the 21st century will differ from the present". Had SUBTRANS been considered during the formulation of this Act it would likely have become that clear vision.

THE FUTURE OF OUR TRANSPORTATION INFRASTRUCTURE

by William Vandersteel *

"NO industry in the nation is more important to U.S. economic growth and international competitiveness than transportation."

Samuel K. Skinner
Former U.S. Secretary of Transportation

Of the nation's freight bill in 1990, trucking costs represented over 77% of the total while railroads' share was reduced to less than 9%.** But at an average cost of 25 cents per ton-mile for long-haul trucks,** this remains an expensive way to move goods; not surprising considering that, on average, trucks move 20 tons at only 11 miles per hour. The movement of freight, unlike passengers, lends itself to automation and this cannot be achieved by trucks. Trucks are primarily responsible for damage to highways and bridges, not to mention their impact on traffic congestion, accidents and air pollution. Moreover, trucks consume 36% of all petroleum products.**

Just as our railroads became more efficient freight carriers when passenger service was abandoned, highway travel would improve if trucks were eliminated. Highways, which are shared by cars carrying passengers and trucks carrying freight, compromise the efficiency of both modes. Any motorist will gladly testify to the nuisance of trucks on their roads, largely paid for by their gasoline taxes, with the truck contribution much less than its apportioned cost.

The next evolution in our transportation infrastructure must be to segregate passengers and freight on the nation's highways. The trucking industry evolved because it could transport certain types of freight more efficiently than rail. While rail increasingly concentrated on bulk hauls of coal, grain, etc., trucks became the predominant carrier of break-bulk freight. To displace trucks from the nation's highways will require a new system, capable of providing more efficient service at lower freight rates and, preferably, using electric energy.

The answer is SUBTRANS, a totally automated underground freight transportation system. SUBTRANS is an outgrowth of pneumatic capsule pipeline technology developed by TUBEXPRESS, Inc.,*** to transport coal or other bulk commodities in tubular wheeled vehicles, called capsules, which are "pumped" through pipelines using light air pressures. SUBTRANS, developed by Ampower Corporation, is a larger version of this system but, instead of using air pressure as the motivating power, SUBTRANS uses electric energy through linear induction propulsion. Though still in an early development stage, SUBTRANS systems will likely have an internal diameter of 2 meters (6-1/2 ft.) which size will allow 96% of all the freight that moves by trucks to pass through, while the remaining 4% is too large and will need to move by conventional means. The infrastructure cost of SUBTRANS is comparable to highways or rail beds but it is rapidly recovered through total automation in transit, high energy efficiency and low maintenance cost. Present estimates confirm that such systems can operate profitably at revenues less than half of that charged by long-haul trucks.

* President & CEO of Ampower Corporation, North Bergen, NJ 07047.

** ENO Transportation Foundation, 1992 - 10th Edition, pgs. 8 & 19.

*** TUBEXPRESS, Inc., is a joint venture of Ampower Corp. and the Transco Energy Co. of Houston, TX.

A nationwide SUBTRANS system provides the following benefits:

To the extent that SUBTRANS displaces long-haul trucks:

- Reduced traffic congestion on the nation's highways.
- Reduced traffic accidents, injuries and fatalities.
- Reduced exhaust pollution and traffic noise.
- Reduced damage to roadbeds and bridges.
- Reduced consumption of petroleum fuels.

Improved freight transportation economics:

- No delivery interruptions or delays due to climate, accidents, traffic or strikes.
- Deliveries can be scheduled to meet just-in-time production requirements.
- Virtual elimination of cargo damage and pilferage in transit.
- Faster long distance delivery times than truck or rail.
- Lower direct transportation costs.

Macro-economic advantages:

- Underground easements are generally available at no cost* and, except for some terminal areas, there is no need to acquire surface real estate.
- Safety - the system is protected from the public and the public from the system, particularly for the transport of hazardous cargoes.
- Once installed, operates unseen and unheard with practically no impact on the environment.
- By eliminating most long-haul trucks, the capacity and safety of the existing highway system for automobiles is increased without further investment.
- Electric energy is substituted for diesel fuel used by trucks.
- A reduction in the freight cost component of the Gross Domestic Product.
- Economic stimulus through nationwide construction activity as SUBTRANS systems are installed.

Because of the long time horizon involved, government action is necessary to develop SUBTRANS through the prototype stage and thereafter its involvement will be limited to providing underground easements and eminent domain rights along the 50 ft. right-of-ways or center dividers of the Interstate Highway System.* Once demonstrated, private enterprise will be motivated to develop SUBTRANS systems across the country for the same reason that all other product pipelines are privately owned and operated. By displacing most of the trucks from the nation's highways, the existing road capacity and safety is much improved. What little is left of truck transportation for outsize cargo can be restricted to operate during off-peak hours.

SUBTRANS is a little known new concept and, to date, it has not received the attention it warrants by members of Congress, the Department of Transportation or the Department of Energy. There is a tendency to dismiss the idea as a "pipe dream" on the grounds that the presumed high infrastructure cost would result in freight rates that cannot compete with trucks. This fails to take into account the high cost of trucking and a preliminary economic analysis confirms that SUBTRANS can operate profitably at a revenue of less than half that currently charged by long-haul trucks which in 1991 came to nearly \$0.25 per ton-mile.** A SUBTRANS system charging a revenue of \$0.10 per ton-mile, while operating at only 15% of its rated capacity, can earn a 25% DCF (pre-tax) profit and recover its capital investment in only 7-1/2 years. The rated capacity of SUBTRANS is 15,000 tons per hour in each direction. If these projections are confirmed, SUBTRANS will inevitably become the freight transportation system for the 21st Century.

* As provided for by the Intermodal Surface Transportation Efficiency Act of 1991, Title I, Sec. 1027.

** ENO Transportation Foundation, 1992 - 10th Edition, Oct. 1992 Supplement, pg. 9 - Class I & II Trucks Revenue 24.82 cents per ton-mile.

REVENUE AND COST PROJECTION FOR SUBTRANS FREIGHT TRANSPORTATION

ASSUMPTIONS:

- . Analysis based on a 50-mile segment of a much larger system.
- . To provide for the cost of terminals, one terminal is included for each 50-mile segment.
- . Freight Rate is assumed at \$0.10 per ton-mile* (40% of truck rate).
- . SUBTRANS operating at only 15% of rated capacity (equivalent to 100 trucks per hour in each direction).
- . Return on Investment is computed at 25% discounted cash flow (pre-tax).
- . Underground easements assumed available at no cost.

* END Transportation Foundation 10th Edition October 1992 Supplement, page 9 - 1991 Truck Rate \$0.2482 per-ton mile.

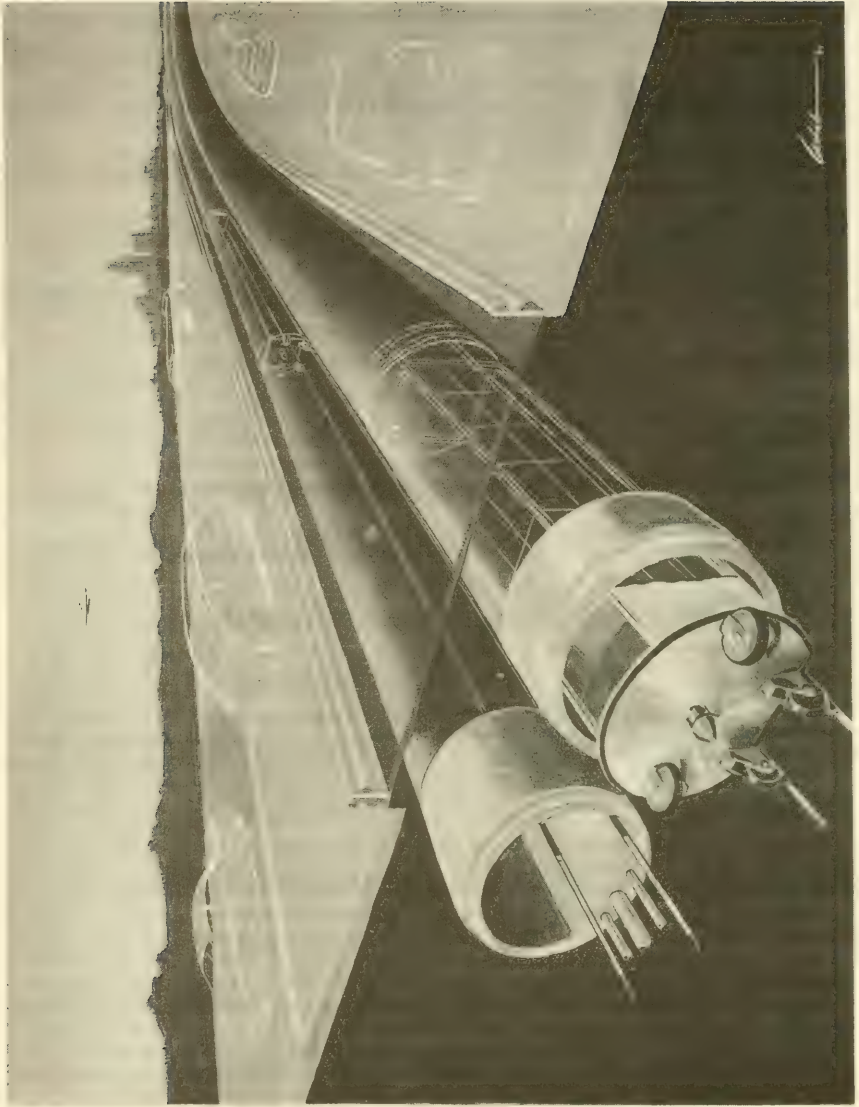
TOTAL CAPITAL COST - 50 MILE SEGMENT		ANNUAL OPERATING COST - 50 MILE SEGMENT	
	(In \$1000)		(In \$1000)
Dual conduit 2 meter ID (50 MILES)	50 Yrs 90,000	Annual energy cost at 15% of capacity	75,000
Underground installation (50 MILES)	50 Yrs 200,000	Cost of operating energy per kilowatt hour (\$)	.05
Linear ind. propulsion & control sys.	25 Yrs 100,000	Terminal personnel (8 per shift) = 24 x \$50000	1,200
One terminal	25 Yrs 25,000	Maintenance cost per 50 mile segment - one terminal	10,000
Capsule cost/50 miles (600 x \$12,000)	10 Yrs 7,200		

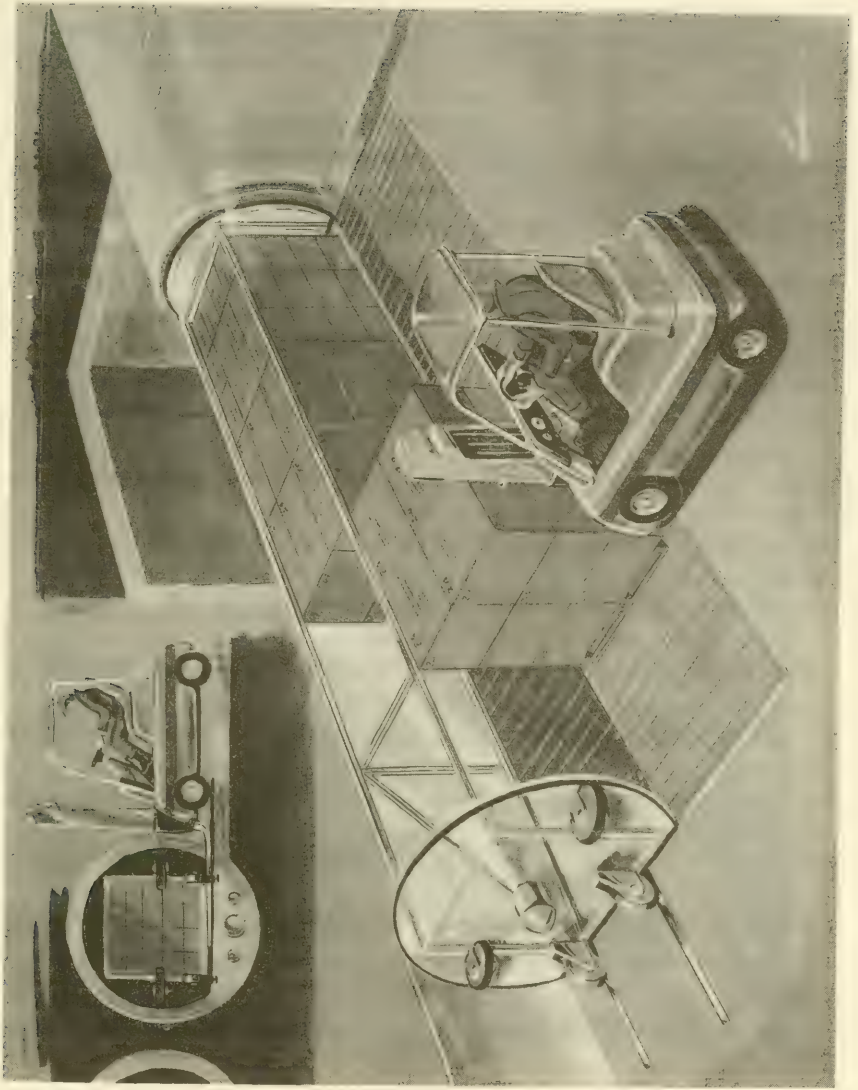
SUBTRANS (ONE MILE REVENUE/COST PROJECTION DATED DECEMBER 24, 1992)

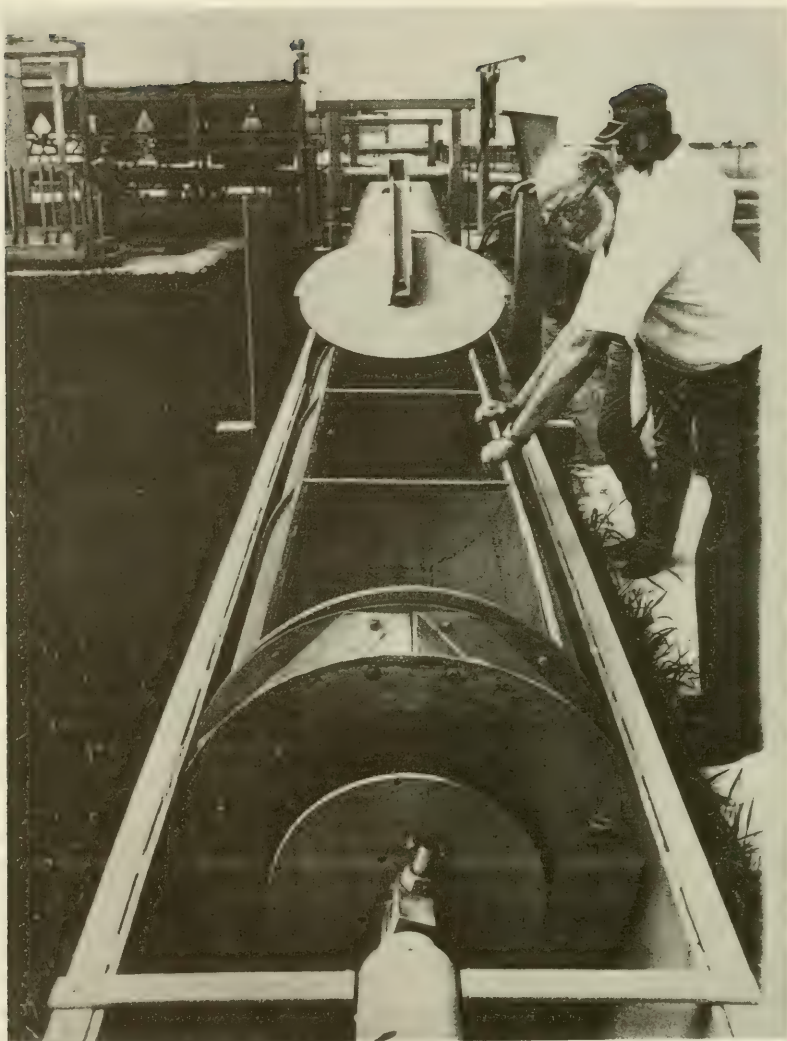
YEAR	0	1	2	3	4	5	6	7	8	9	10
Freight Rate (\$/ton mile)	\$0.10										
Percent Inflated	100%										
Inflation Rate	3.0%										
Revenue Inflation Factor	1.0000	1.0300	1.0609	1.0927	1.1255	1.1593	1.1941	1.2299	1.2668	1.3048	1.3439
Cost Inflation Factor	1.0000	1.0300	1.0609	1.0927	1.1255	1.1593	1.1941	1.2299	1.2668	1.3048	1.3439
(In \$1000 Except Revenue/Ton)											
Tons per year at (15% Load Factor)	0	37843.2	37843.2	37843.2	37843.2	37843.2	37843.2	37843.2	37843.2	37843.2	37843.2
Revenue/Ton (Inflated)	.0000	.1030	.1061	.1093	.1126	.1159	.1194	.1230	.1267	.1305	.1344
Gross Revenue (Inflated)	0	3,898	4,015	4,135	4,259	4,387	4,519	4,654	4,794	4,938	5,086
Operating Cost (Inflated)											
Personnel (Operations)	0	24	25	25	26	27	28	29	30	30	31
Maintenance, Parts & Labor	0	200	206	212	219	225	232	239	246	253	261
Energy cost @ \$0.05/KW-HR	0	1,500	1,545	1,591	1,639	1,688	1,739	1,791	1,845	1,900	1,957
Miscellaneous (Insurance)	0	10	10	11	11	11	12	12	12	13	13
Total	0	1,734	1,786	1,840	1,895	1,952	2,010	2,070	2,133	2,197	2,262
Operating Income (Inflated)	0	2,164	2,229	2,296	2,364	2,435	2,508	2,584	2,661	2,741	2,823
Capital Expenditures (Inflated)	8,444	0	0	0	0	0	0	0	0	0	0
Pre-tax Cash Flow	(8,444)	2,164	2,229	2,296	2,364	2,435	2,508	2,584	2,661	2,741	2,823
Discounted Factor (Mid-year)	1.0000	.8943	.7155	.5724	.4580	.3664	.2931	.2345	.1876	.1501	.1201
Discounted Pre-tax Cash Flow	(8,444)	1,935	1,595	1,314	1,083	892	735	606	499	411	334
Cumulative Discounted Pre-tax Cash Flow	(8,444)	(6,509)	(4,914)	(3,600)	(2,517)	(1,625)	(890)	(284)	215	627	966
NPV of Pre-tax Cash Flow											966

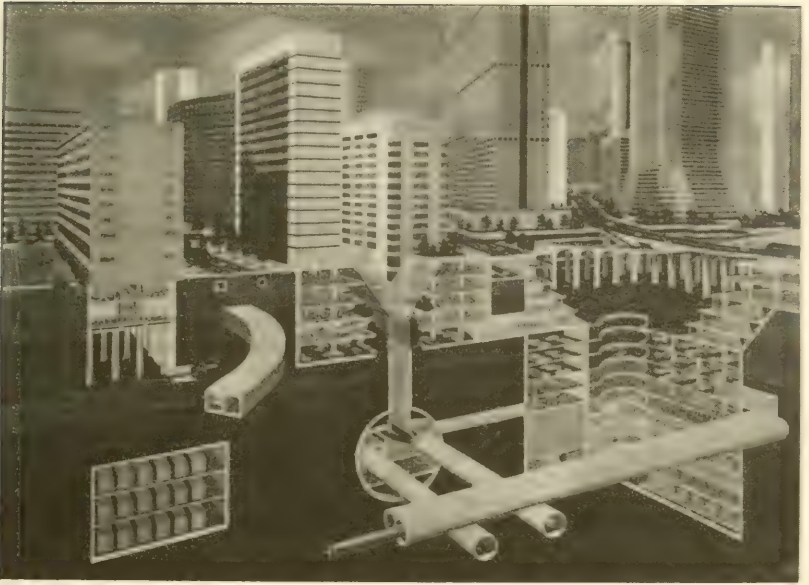
CONCLUSION

While earning a 25% DCF (pre-tax) return, the SUBTRANS system capital cost is recovered in less than 8 years, whereafter it will generate substantial additional positive cash flows. Therefore, the total DCF returns over the life of the SUBTRANS is substantially in excess of the 25% DCF as computed.









Takenaka Corporation's "Geoblock Network" Concept for Underground Space development, presented at Geotech '90, April 1990, Tokyo.

SUBTRANS

A NEW FREIGHT TRANSPORTATION SYSTEM

The U.S. Department of Transportation estimates that every year traffic congestion causes more than two billion vehicle hours of delays; the Department estimates that those delays will increase four-fold by the year 2000. The Texas Transportation Institute at Texas A&M University made a study of 39 large cities and estimates that productivity lost to traffic is already costing the United States more than \$40 billion per year. Even these estimates do not measure the full impact on the economy because there is no practical means to determine the consequential costs resulting from those delays. These problems are not likely to be alleviated by expanding the existing transportation infrastructure, though modern technology can make some improvements in traffic efficiency.

Historically, passengers and freight have used common or shared facilities. A century ago rail was the only means for long distance movement for passengers and freight. Earlier in this century, cars and trucks were introduced and, as the road system developed, cars became the dominant means for passenger travel and trucks the primary means for freight transportation, with cars and trucks sharing the same highways.

The Interstate highway system, commenced during the Eisenhower era and now in its final stages, substantially improved our transportation infrastructure and lowered transportation costs for both people and goods. However, the growth in traffic is approaching the saturation point and the resulting traffic delays only serve further to reduce the system's capacity. The need for a solution is becoming increasingly urgent.

The answer lies in segregating the movement of people and freight. A new technology, generically known as pneumatic capsule pipeline transportation, can provide that answer. Known as SUBTRANS, it involves using linear induction propulsion to "pump" wheeled vehicles, called modules, through underground pipelines. Though to date such systems, motivated by air pumps, have been designed only to haul bulk goods, such as coal, a larger version can readily be configured to transport common carrier freight, limited only by size.

The advantages of SUBTRANS are many. A common carrier system will move through underground reinforced concrete pipes with an internal diameter of 2 meters capable of transporting palletized cargoes with a 1.25 x 1.25 meter cross-section. It is estimated that, of all the freight that now moves by inter-city trucks, 96% can pass through a 2 meter pipe while the remaining 4% is too large and would need to move by conventional means. Pipeline routing will usually parallel railroad trackage or Interstate highways, utilizing either the center strip divider or buried along both sides. One capsule is capable of transporting 6-8 tons and the throughput capacity of such a system is rated at 15,000 tons per hour; the equivalent of 750 trucks per hour. As the system is totally automated it can operate continuously around the clock.

Though the initial cost is high, the investment is rapidly amortized through complete automation, high energy efficiency and low maintenance. Because the system is not subject to interruptions or work stoppages, deliveries can be made to coincide with just-in-time production requirements. As capsules operate continuously at average speeds of 60 mph or greater, SUBTRANS can provide faster delivery time than trucks.

A major advantage is the contribution to safety to the extent that moving freight underground displaces truck traffic. To the same extent, traffic congestion and exhaust pollution are reduced.

Because the system is protected from the public and the public from the system, a high degree of security is assured and damage in transit is virtually precluded. Moreover, as the system is completely enclosed and the capsules are separated by air pockets thereby precluding collisions, SUBTRANS is well suited for safely transporting hazardous materials such as nuclear fuels or radioactive wastes. Once installed, the environmental impact is negligible and limited only to air pollution contributed by electric utilities supplying power to motivate the system.

Substantial energy savings are possible because the system is electrically powered, saving fuel used by trucks. Moreover, energy is regenerated as capsules slow down or move up and down grades. As SUBTRANS can tolerate 20% grades, it can achieve more direct routing than rail or highways which are restricted to much lesser grades.

The capsules are simple, low cost free wheeling vehicles which allow low demurrage costs to shippers. Capsules can be designed to handle solid, liquid or gaseous cargoes and, for temperature controlled shipments, refrigeration compressors can be powered from the wheels.


A high degree of safety is provided when transporting hazardous cargoes. As it is a closed system with a limited oxygen supply between capsules, explosions or fires are virtually precluded and, if they occur, the damage is contained within the pipeline system.

To implement this new freight transportation mode will involve a national commitment not unlike that which led to the Interstate Highway System, initiated during the middle 1950s. For common carrier use, an extensive application engineering development program must be undertaken along with a full scale test facility as, to date, the system engineering is limited to the transportation of bulk goods, like coal.

The recently enacted "Intermodal Surface Transportation Efficiency Act of 1991" contains the following Declaration of Policy:

"It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner."

Except only that SUBTRANS will only move freight, it meets the policy objective of this Act in every aspect. SUBTRANS is destined to become the freight transportation system for the 21st Century.



C O R P O R A T I O N
ONE MARINE PLAZA
NORTH BERGEN, NEW JERSEY 07047
TEL: 201-868-2000 FAX: 201-868-2002

AUTOMATING THE TRANSPORTATION OF FREIGHT

The transportation of freight lends itself to automation; the movement of people does not. Passenger travel demands speed and convenience while freight demands efficiency and punctual delivery. Because these demands conflict, the efficiency of the transportation infrastructure depends on the extent to which the movement of people and freight can operate independently of each other. Railroads thrived in the earlier part of this century as long as they were the only means for transporting both people and freight. However, the introduction of the automobile, along with the development of roads and highways, led to a gradual attrition of passenger rail services as more and more people took to the highways. Along with the development of airlines, this caused a precipitous drop in passenger-rail services. ICC regulations, requiring railroads to maintain money-losing passenger services, became a severe financial burden for most major American railroads. Once railroads were allowed to abandon passenger services and rationalize the right density trackage, the railroad industry became more efficient, operating a much reduced network, devoted entirely to freight transportation. AMTRAK, the only exception, maintains limited passenger service but needs government subsidies to survive.

Further deregulation under the Staggers' Act in 1980 led to large improvements in productivity and American railroads today are among the only private enterprise, profit making rail systems in the world. In Europe and Japan, where the railroads still carry passengers, the systems are publicly-owned and require on-going government subsidies.

Trucks, of course, have been the other major factor in down-sizing railroads and, according to statistics,* during 1991 trucks earned 77% of all the nation's total freight bill, railroads 9%, a major portion of which was transporting coal, and the remaining 14% was earned by pipelines, air and water transport. Railroads are at their most efficient when transporting cargo, all of which originates in one terminal and discharged in another terminal, like the transportation of coal in unit trains between mines and utilities.

The difficulty, however, is that we have transferred the shared passenger/freight problem from the railroads to the highways where passenger cars and trucks, using shared facilities, tend to crowd each other out. More and more of state and federal highway dollars are going to add freight capacity on highways--additional lanes on interstate highways, truck climbing lanes, modern truck weighing facilities, and beefed up pavement and bridge maintenance programs. Long-haul trucks are the major cause for damages to roadbeds and bridges. Many highways, now the subject of such spending programs, would be adequate for years to come with little new investment and drastically reduced maintenance if most truck traffic could be eliminated. To achieve that objective we must look to new technology which will relieve the nation's highways from their role as freight corridors.

The recognition that the transport of freight lends itself to automation suggests the use of a modular system to transport freight through underground conduits or ducts. This new technology is an outgrowth of pneumatic capsule pipeline technology developed by our subsidiary, TUBEXPRESS, Inc.,** designed to transport coal through 36" steel-lined pipe. The transportation of common carrier freight, currently carried mostly by trucks, suggests that the internal diameter or cross-section of the ducts be adequate to accommodate palletized cargoes. For a circular cross-section, the internal diameter would need to be 2 meters (6-1/2 ft.) and a preliminary study shows that this cross-section will allow 96% of all common carrier freight to pass through and the remaining 4%, being too large, will need to move by conventional means.

A 2 meter diameter system has a throughput capacity of 15,000 tons per hour in each direction, the equivalent of 750 trucks per hour in each direction. This is, of course, a much larger volume than currently moves on the busiest highway but it does allow for future growth.

* ENO Transportation Foundation "Transportation in America" 1992 Edition, pg. 19.

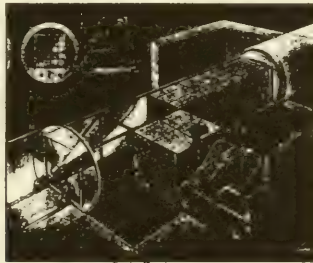
** TUBEXPRESS, Inc., is a joint venture of Ampower Corporation and the Transco Energy Co. of Houston, TX.

Though the infrastructure cost of SUBTRANS, as this new technology is known, is high, it is readily amortized by low operating cost resulting from total automation in transit, high energy efficiency and very low maintenance costs. High energy efficiency is achieved through low rolling friction by the use of flat (flangeless) steel wheels on flat rails and the absence of "head winds" because the modules move with the air stream. The aerodynamic losses are confined to the modest drag of the air column with the duct walls. In mountainous terrain, energy regeneration, inherent in the system, saves further energy. The use of electric energy saves petroleum fuel, of which trucks consumed 38%* of the total consumed in 1991.

Other obvious advantages of SUBTRANS are the ability to make predictable deliveries to meet just-in-time production requirements and the minimal environmental impact, limited to that contributed by the utilities furnishing the electric power. Low maintenance costs are characteristic of buried pipelines, while the freight modules are simple free-wheeling vehicles that also require very low maintenance.

Not only does SUBTRANS provide total automation in transit, but loading and discharging lends itself to automation as well. In one version, the cargo module, which can be of varying length and capacity, is a low cost box-like structure fitted between two end plates to which the support and guide wheels are attached. The removable module becomes a component of the warehousing operation and is returned to the SUBTRANS system either empty or with return cargo.

Once there is general recognition of the obvious advantages of SUBTRANS, the nationwide implementation of this new automated, underground freight transportation technology cannot be far behind.



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ONE MARINE PLAZA
NORTH BERGEN, NEW JERSEY 07047

* ENO Transportation Foundation "Transportation in America" 1992 Edition, pg. 19.

STATEMENT OF SENATOR DAVE DURENBERGER
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
HOUSE PUBLIC WORKS & TRANSPORTATION COMMITTEE
MAY 4, 1993

Mr. Chairman, it has been nearly one-and-a-half years since the historic Intermodal Surface Transportation Efficiency Act of 1991 was signed into law. Because this 6-year authorization transforms the way we do transportation policy in this country, it is indeed appropriate that we review how well it's working. I appreciate the opportunity to comment on today's agenda of Highway Safety issues.

As you are aware, the Intermodal Surface Transportation Efficiency Act of 1991 included provisions regarding the use of safety belts and motorcycle helmets (section 153 of title 23, U.S.C.). The goals of these provisions are laudable -- the reduction of the number of fatalities and crippling injuries which occur on our nation's roadways. In 1989 over 45,000 lives were lost in motor vehicle accidents and over three million people were injured. The consequence of these deaths and injuries cost our country approximately \$74 billion each year.

The intent of this legislation, however, is to provide "a carrot and stick" mechanism of manipulating the disbursement of federal transportation funds in order to coerce states into adopting mandatory safety belt and helmet laws. There is merit in using federal funds for highway safety research, to encourage states to improve traffic safety via greater education efforts and by stimulating innovative programs designed to reduce the number of high risk motorists. However, I have serious reservations about using federal "blackmail" to force states into enacting mandatory seat belt and motorcycle helmet laws. I feel we need to re-evaluate the role this legislation plays in mandating personal behavior.

Likewise, I believe that outlining how a state spends its own money - which the federal government collects through the gas tax - erodes the principles of flexibility which were redefined in the Intermodal Surface Transportation Efficiency Act of 1991.

I know for a fact that my state takes great exception to this manipulation. Last year, the State of Minnesota passed a resolution "memorializing Congress to refrain from imposing upon the states' constitutional authority to regulate traffic and motor vehicle safety within their respective boundaries, and specifically, to refrain from mandating the passage of state laws requiring the use of motorcycle helmets, safety belts, and child restraint systems".

This spring, faced with the penalty laid out by these provisions, the Minnesota Legislature considered several bills that would implement some type of mandate on helmet use, including one that would have required helmets for riders under 21 years of age. None of the bills made it out of committee. At least 11 other states have rejected mandatory helmet laws this year, despite the sanctions that will be imposed upon them by the federal government.

Mr. Chairman, it is for these reasons that I have again introduced a bill in the Senate, S.295, to repeal the penalty provision of section 153 of title 23. My bill retains the grant program as a positive incentive to pass both laws, while also encouraging a high rate of compliance. However, it does not penalize, punish or micromanage the State's federal funds if they choose not to pass either a mandatory safety belt or helmet law.

Proponents of the penalty provision will tell you that it is not a mandate. The penalty directs States to spend additional monies on the section 402 program in exchange for not passing the laws. But, most states already have programs in place. Forcing them to spend more money is only giving public safety offices the green light to come up with ways to spend more money. I am concerned that under those circumstances, and without a required local match, the result could be irresponsible spending of scarce transportation dollars.

I encourage you to closely examine why Minnesota has been able to drastically lower the fatality rate of its motorists to one of the lowest in the nation. I think you will find it is because Minnesotans know that there is no panacea or easy fix. Minnesotans know that it takes persistent effort in a broad array of traffic safety initiatives to significantly reduce roadway fatalities.

Minnesota motorists and motorcyclists have shown that they have a strong commitment to improving traffic safety. They have requested, supported and prodded the Minnesota Legislature to honestly and competently meet their demands for safer roadways. Likewise, Minnesota motorcyclists encouraged the state legislature to enact the toughest licensing standards in the nation. They have also implemented self-funded comprehensive rider education programs and public awareness programs which have won over 20 national awards and serve as a model for other states.

They do it because in Minnesota good behavior is rewarded -- not because someone in Washington said they "had to do it." That is why the Motorcycle Industry Council rated Minnesota the second safest state in the nation in which to ride a motorcycle. My state's 1992 fatality rate plummeted to a 25-year low, in spite of doubling the number of licensed motorcyclists. Since record high fatalities were recorded in 1980, Minnesota has experienced a 77 percent reduction in fatalities. This occurred because Minnesota motorcyclists and lawmakers realized that there is no substitute for continued ongoing traffic safety education and tough licensing provisions.

Mr. Chairman, throughout the process of debating the Intermodal Surface Transportation Efficiency Act of 1991, I went on record in opposition to this penalty proposal. I recognize that both bodies of Congress included the safety belt and helmet provisions in their respective bills. However, I strongly believe that Congress should reexamine this attempt to manipulate state governments.

In closing, I would caution you that reliance on federal mandates to traffic safety, such as that embodied in Public Law 102-240, may be counter-productive in the long run. A wiser course of action would be to enlist cooperative support and to harness the creative energies of concerned citizens to work together with the goal of decreasing the number of serious traffic accidents. Consequently, I believe that the Intermodal Surface Transportation Efficiency Act needs to be refocused to solicit teamwork, rather than provoke conflict between government and citizens, both of whom share a common goal of improved traffic safety.

Statement for the Record

**Commissioner Wayne Shackelford
Georgia Department of Transportation**

**House Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives**

**Hearings on Oversight of the
Intermodal Surface Transportation Efficiency Act of 1991**

**#2 Capitol Square
Atlanta, Georgia 30334
(404) 656-5206**

The Georgia Department of Transportation is pleased to submit testimony regarding the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

In general, we feel that Congress met the challenges presented it in designing a national surface transportation bill to address the new mobility needs of the United States in the post-Interstate era. The long term outlook of the bill and its six year time frame are highly beneficial to the planning decisions within the states. As in the case of most states, we believe full funding of ISTEA is the best way to ensure the successful implementation of all aspects of this bill.

We would like to point out one area of integration among federal agencies which the Department feels would significantly improve the implementation of the intermodal directives of ISTEA. It is clear that in order to implement the federal ISTEA mandate for intermodal planning in the urban metropolitan areas, a uniform process for administration of Federal Transit Administration and Federal Highway Administration planning programs must be adopted.

Due to the contract authority vested in the FHWA by Congress, the Federal Highways Administration's administrative requirements are more streamlined and better able to respond quickly and efficiently to the needs of state and local areas. While we are required to integrate multiple transportation systems under the 1991 ISTEA bill, the lack of contract authority within the Federal Transit Administration precludes a comprehensive and uniform system of intermodal programming. In order to fully adopt intermodalism as a fundamental objective within state transportation departments, we feel FHWA and FTA must have uniform application and contracting procedures.

In addition to federal coordination, one of the hallmarks of this legislation was the commitment made by authorities on the federal and state level to ensure a greater degree of participation by local planning organizations. The Georgia Department of Transportation strongly supports the intent of the law in this regard. In order to assist the committee in evaluating the success and limitations of actual implementation in this area, we would like to mention that full integration between federal, state and local agencies will be a slow process in many regards.

Many local communities have not had to consider the long range impact of planning decisions and have a tendency to operate on a project-by-project basis rather than on intermodal or "vision" basis. While some communities have responded enthusiastically, increased their participation and assumed the additional responsibilities associated with long range planning, many localities are still unprepared to take full advantage of this unique opportunity.

The requirement for state agencies to receive input from local MPO's assumes an eagerness on the part of local agencies to participate. Our experience indicates enthusiasm is unevenly distributed. While motivation will increase with experience, Congress should be aware that there is a long learning curve, and full integration will depend on whether or not local communities seek out the expertise available to them, and how well state and federal agencies can assist localities without prescribing a course of development for them.

A second hallmark of ISTEA was increased flexibility. The flexibility to move funds from Title I to Title III has enabled the Georgia Department of Transportation to enhance the entire transportation system. In contrast, the limited flexibility of funding within Title I does not allow the optimum utilization of funds. The year to year management of state planning would be significantly improved if these obligations could be promised on a long-term basis with year-to-year transfers allowed among accounts.

In addition to the issues of flexibility and regional involvement in planning, we would like to comment on the six Management Systems prescribed within ISTEA. While regulations regarding these systems are still largely undefined, valid concerns have been raised that the ambitious desire to calculate planning decisions on a more empirical basis will create standards so technically demanding as to become cumbersome. In particular, the Congestion Management and Intermodal Transportation Systems will require significantly more technical planning than will be possible by the prescribed 1994 deadline.

While many planning decisions can be assessed by empirical standards, we should not forget that maintaining personal mobility is a hallmark of the individualist spirit in the United States. The needs and decisions in this area involve a human element which cannot be fully replaced by a set of external standards, and the attempt to do so will meet with strong and appropriate resistance.

While we are primarily concerned with issues which have the potential to undermine the long range goals of the ISTEA bill, we would like to raise a secondary issue which we feel deserves serious review by the authorizing Committee.

The Georgia Department of Transportation appreciates the intent of Section 1038 regarding the disposal of scrap tires. However, we believe the addition of crumb rubber to the pavement mixture raises several serious questions which must be answered before this practice is adopted on a broad basis. Health and safety questions for highway workers have not been answered to our satisfaction, nor has the resultant pavement been tested over a long enough period to adequately answer questions concerning the engineering value of this process. In addition, we are concerned with the environmental impact of weather erosion on pavement comprised of scrap tires. In light of the more stringent clean water requirements and potential treatment of highway run off, we feel additional testing of crumb rubber pavement is necessary to prevent an unintended negative environmental impact. Finally, the state of Georgia currently recycles its highway pavement. We feel the addition of

crumb rubber to new pavement may endanger this successful recycling program and result in an increase in indisposable waste. We respectfully recommend Congress focus serious attention on this matter before health and safety problems occur.

The Georgia Department of Transportation appreciates the opportunity to submit testimony regarding the implementation of the Intermodal Surface Transportation Efficiency Act of 1991, and thanks the Committee for holding these timely and instructive hearings.

NO MEANS NO!

'The People Have Spoken'

PO Box 402 • Peabody, MA 01960 • (508) 531-9698

Robert "Chip" Ford, Chairman

• Paula Collins, Treasurer

May 27, 1993

Honorable Peter I. Blute
1029 Longworth HOB
Washington, DC 20515

Re: Hearings of May 4, 1993 by the Subcommittee on Surface Transportation Implementation of the Intermodal Surface Transportation Efficiency of 1991

Dear Congressman Blute:

As you may recall, Jerry Williams and I led the successful repeal of the Massachusetts mandatory seat belt law in 1986. Since then Freedom First, the organization which I founded and led until 1990, when I turned the leadership over to Dorothea Thomas-Vitrac, has successfully opposed annual efforts to reinstate another mandatory seat belt law. I have recently founded No Means No! to oppose Rep. Barbara Gray's latest, 1993, annual assault (H-952) on the voters' decision.

On October 17, 1989 I accepted the invitation of the U.S. Senate Subcommittee on Water Resources, Transportation, and Infrastructure of the Committee on Environment and Public Works and testified against federal coercion of state mandated seat belts and motorcycle helmets use, S. 1007.

Since our successful repeal of the Massachusetts mandatory seat belt law, according to the most recent report of the National Safety Council, highway fatalities in our state have plummeted from 811 in 1986 to 472 in 1992; a 42 percent steady decline since repeal of the state mandatory seat belt law.

For the third year in a row, the National Safety Council reported that Massachusetts (one of three states) in 1992 had the lowest number of highway fatalities per number of miles traveled (1.1 per 100 million); a 13 percent decrease from the previous year.

It also reported that in 1992 Massachusetts (one of two states)--for the second year in a row--had the lowest number of highway fatalities per population (7.8 per 100,000); 53 percent below the national average.

**Testimony of Robert "Chip" Ford
Chairman, No Means No!**

This unprecedented record has been accomplished despite Massachusetts ranking third-lowest in the nation for seat belt use (31 percent), according to a study released last December. "This achievement is a credit to our law enforcement community and its emphasis on highway and road safety," responded Massachusetts Public Safety Secretary Thomas Rapone.

There are other, obviously better, ways to improve highway safety. States should be left alone to implement them as each state best sees fit under local conditions and circumstances.

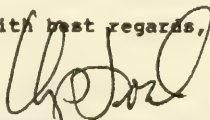
When something's not broken, why fiddle with it, if not just for the sake of intrusion. It could well be broken in the needless process--and in this case, someone, or many, could be hurt--or worse--as a direct result of federal meddling.

No Means No! and I strongly support the efforts of Congresswoman Olympia Snowe of Maine (H.R. 799), Senator David Durenburger and others to return without coercion the decision of personal safety in the use of seat belts and motorcycle helmets, "reserved to the states respectively, or to the people," as protected and prescribed under Article X of the U.S. Constitution.

I would appreciate if your office would insure that this letter and my comments are included as testimony before the above referenced Subcommittee public hearing.

Further, I hope we can count upon you to add your name as a co-sponsor of H.R. 799.

With best regards,



ROBERT "CHIP" FORD
Chairman

1 Incl

The Boston Sunday Herald, May 23, 1993
Counterpoint page: "Mandatory Seat Belt Law"

COUNTERPOINT: TODAY'S TOPIC Mandatory seat-belt law

Seat-belt zealots ignore facts, public wishes

Can "No!" ever mean "maybe" or even "yes," if the amount given is long enough?

The issue today isn't so much freedom vs. mandated safety. That was decided in 1980. Freedom went handily when voters repudiated the state mandatory seat-belt law.

Highway fatalities in Massachusetts have since plummeted 44 percent. For the third year Massachusetts has had the lowest number of highway fatalities — 85 percent below the national average. But still the obsessive push to buckle-up-or-else stands on.

Just 13 days after voters repudiated her law, state Rep. Barbara Gray was back with the first of seven annual attempts to violate the repeal with an even more oppressive law.

"The voters made a mistake."

"Every year a new 'critical need' has been created to buckle us up. This year it's called — ready for this? — a

ROBERT 'CHIP' FORD

Robert "Chip" Ford, a North Shore alpinist, is the chairman of No Means No, and was a leader of the referendum campaign to repeal the original Massachusetts mandatory seat-belt law in 1980. He was also the founder of Freedom First, and its chairman until 1980. Ford was educated at the Massachusetts College of Art. He served in the U.S. Army in 1969-71.



"Jobe bill"

Gray claims concern over "a loss of hundreds of construction jobs" from a transfer of \$7 million in federal highway funds to the state highway safety program. Yet she supports diverting \$25 million in Central Artery Project federal highway construction funds to an "art program" bonodoggie.

This tactic is not surprising,

coming from those who also promote cuts in insurance rates if we will only submit to their precious law. Reductions have never occurred in state with mandatory-use laws on their books. Don't hold your breath — there's no provision for one in this bill, either.

Why must they create, bend, and stretch the numbers? Why do they make promises that

have never been kept anywhere their law has been imposed?

In a debate with Gray, I asked if she'd accept responsibility for those who will be more seriously injured or killed as a direct result of being forced to wear a seat belt.

Her response was: "I'm not going to answer that — I'm not in a position to assume responsibility for anyone except myself." So why does she persist in trying to impose her risky opinions and theories on us?

The Legislature imposed a mandatory seat belt law in 1980. The \$7500 repeal campaign was grossly outspent by \$60,000 from auto makers and insurance special interests. But still the people in Massachusetts rejected the propaganda bills and voted for freedom.

The issue is no longer just freedom vs. mandated safety. Today the issue is also whether the voters' decision means anything to our elected representatives and will be respected —

whether the citizens' initiative/referendum process will survive.

Nearly, 75,000 citizens circulated and signed petitions — only to have our right to propose a constitutional amendment for term limits thrown back in our faces. Will that also be the fate of our referendum decision? Will our legislators again thumb their collective noses at the voters and force us to put the issue on the ballot again in 1987?

The Legislature passed the 1980 law, but it was the people who repealed it. If a mandatory seat-belt law is to ever again be imposed, it should be only by the people themselves, and only by referendum.

If the safety zealots honestly believe that public opinion has changed, let them collect the signatures and put the question on the ballot. Do they fear democracy, or just oppose it? When the people have spoken, "No" should always mean an X.

YOUR VIEW

In 1986, a law requiring drivers to wear seat belts and imposing fines on scofflaws, was repealed by Massachusetts voters.

Now that law has been reintroduced in the state Legislature. Should it be enacted?



Michael Tingley, 21, Stoneham: No. I just think it's your own personal choice. I don't think they should tell you what to do.



Jessica Dominic, 47, Brookline: I use the seat belts anyway. I'm not sure you can legislate that though.



Sabrina Winnie, 24, Dorchester: I do. I have two children. I think if they're not wearing seatbelts they should be prosecuted.



Abdul Hatzpik, 30, West Roxbury: Well, I agree with it. Because it protects 100 percent of the lives that may be lost from not wearing it.



Frank DiStefano, 54, Boston: No. I don't think so. Most people should hear their own choice. If people want to get killed

A buckle-up law would be best all around

Once again, an old contention is up for another round of controversial debate among legislators and opponents: the seat-belt law.

Why do we need the seat-belt law? As the original sponsor, I can tell you why it is so important. When the law was passed in 1980, seat-belt use increased while injuries declined. Unfortunately, the law was short-lived. It was repealed 10 months later, in a referendum, by 54 to 46 percent. Since then, injuries have increased 11 percent.

Here is an excerpt from a real-life situation, a deadly result from a car crash that had minor damages to the vehicle but a fatality due to the absence of a seat belt.

"In 1987, 6:30 a.m., while I was finishing the night shift in the emergency department at Newton-Wellesley Hospital, a 36-year-old woman was complaining to work. She skidded off the road in a steep morning drizzle and was thrown out of

BARBARA GRAY

Barbara Gray, a Democrat since 1980, has been a state representative from Framingham for 10 years; she is currently chairman of the House Committee on Commerce. Gray founded the Metrowest Caucus, and co-founded the Caucus of Women Legislators.



her car onto the pavement head first. There was no drifting. There was no speeding. There was no seat belt.

"When she arrived in the emergency room, barely recognizable, I knew it was futile. We worked for over an hour. There was nothing left for me to do but to pronounce her dead."

"When I called her husband to tell her dire condition, he

kept responding in bewilderment. Suddenly this woman was not some anonymous car-crash victim, but a real person with a real family and real consequences. I will never forget the faces of her husband and sons when I told them."

— Dr. Charlotte Yeh that do not have a seat-belt law. Massachusetts is one of them.

The state senates of New Hampshire and Maine have just approved a seat-belt bill and Vermont just enacted one.

We also rank 48th nationally in seat-belt use. Statistics show that Massachusetts' motor-injury rate is the worst in New England, and 70 percent higher than the national rate. It is evident we need a law.

Though my initial purpose for filing this legislation was to increase highway safety, it also would lead to the decrease of health-care and long-term rehabilitation costs for head injuries, hospital costs, auto insurance premiums, etc.

More importantly, the state stands to lose \$14 million in highway construction money in 1986 and \$5 million a year thereafter if we do not enact a seat-belt law. Seven years have passed since the former law was repealed. Today those funds are needed more than ever.

A study done at Newton-Wellesley Hospital in 1986-87

compared costs — from admission to discharge — of 3,000 auto-accident patients by users and non-users of seat belts.

Those without seat belts were more likely to need an ambulance, three times as likely to require admission to a hospital, and had medical bills 30 percent higher than people who used seat belts. During that period alone, a mandatory seat-belt law could have saved Newton-Wellesley Hospital some \$100,000.

I can quote statistics from studies done on this subject. I can also tell you that the cost of bodily injury protection in our auto insurance policies has increased 170 percent since the law was repealed.

What I cannot tell you is how important it is to have this law. Call it unconstitutional, call it too much government, but do not call it unfair when taxpayers like ourselves have to pay for people who won't buckle up. □

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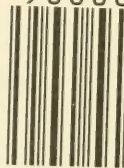


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